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EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL LAW,
IMMIGRATION, AND REFUGEES

OF THE

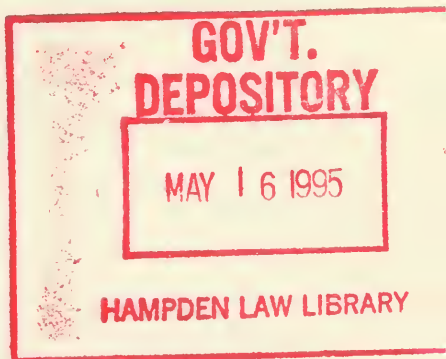
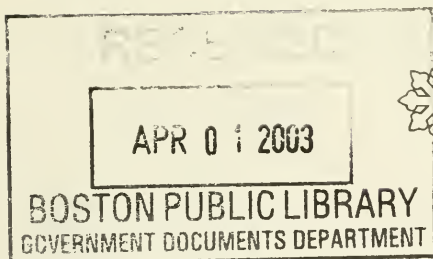
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

OCTOBER 3, 1994

Serial No. 94



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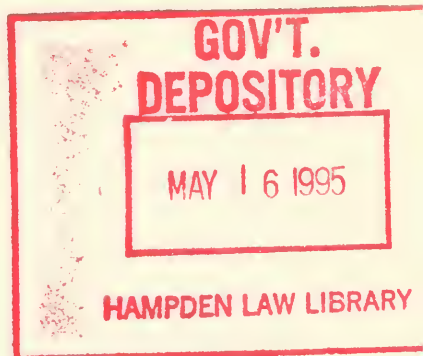
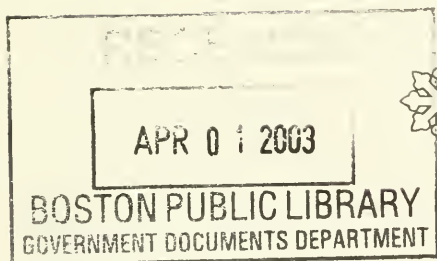
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EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM

MONDAY, OCTOBER 3, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL LAW,
IMMIGRATION, AND REFUGEES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2237, Rayburn House Office Building, Hon. Xavier Becerra (acting chairman of the subcommittee) presiding.

Present: Representatives Xavier Becerra, John Bryant, Lamar S. Smith, and Charles T. Canady.

Also present: Eugene Pugliese, counsel; Kevin Anderson, assistant counsel; Judy Knott, secretary; and Glenn R. Schmitt, minority counsel.

OPENING STATEMENT OF ACTING CHAIRMAN BECERRA

Mr. BECERRA. Let's go ahead and begin this hearing.

My name is Xavier Becerra, I am from Los Angeles, one of the fortunate Members that gets to sit on this committee, and today I have the pleasure of acting as Chair in the place of Chairman Mazzoli who is out today. He does have a statement, and I would like to read that for the record and begin this hearing. It reads as follows:

Mr. Chairman, I apologize for not being present to begin today's oversight hearing on employer sanctions. This morning I am representing the Kentucky congressional delegation at the National Institutes of Health where a building is being dedicated to the late Bill Natcher, the former chairman of the Appropriations Committee and dean of the Kentucky delegation.

I appreciate the cooperation and understanding of all of today's witnesses who were originally scheduled to appear before the subcommittee last Thursday. I would also like to thank my friends and colleagues, John Bryant, and Xavier Becerra, who agreed to chair this important hearing until I return later this morning.

I understand the chairman does expect to return at some point, and what we will do is proceed in the order as indicated by the witness list.

What I would like to do is go ahead and call forward the three individuals who will testify on our first panel. That will be Dr. Bernard Anderson, the Assistant Secretary of Employment Standards Administration with the Department of Labor; Dr. Lawrence Thompson, Deputy Commissioner, the Social Security Administration, Department of Health and Human Services; and Mr. William Ho-Gonzalez, Special Counsel, Office of Special Counsel for Immi-

gration and Related Unfair Employment Practices with the Department of Justice.

Before we go on to the panel and begin to take their testimony, we will have a session for opening remarks. Mine will be brief.

I am very happy to have a chance not only to sit here, but also, of course, to chair a portion of this hearing. For me, this is a very important subject, being the son of immigrants and a Member from the California delegation where the issue of immigration is extremely hot, and I think unfortunately it has gone beyond being hot; it has gotten to the point of being hysterical. I think it is important that we figure out what we are going to do here in this Congress to try to address the concerns that relate to immigration and most specifically to undocumented immigration.

I am one who was waiting anxiously for the report of the Commission chaired by former Congresswoman Barbara Jordan to deal with the immigration issues before the Federal Government. I think some of us have had a chance to digest some of the component parts of that report, and looking at some of those issues that were addressed in the Commission's report, I must say that they did a very comprehensive job and a very thoughtful job of trying to address some of those concerns.

One of the things that they did raise as a possible way of addressing undocumented immigration was, of course, through the employer sanctions provisions of the immigration laws that were passed back in 1986 under IRCA, the Immigration Reform and Control Act. The idea of a national registry which is proposed by that report is one that has been considered in some form or another in the past, and it is an intriguing idea, because it does raise a number of issues. Some I believe would be worthwhile to consider; others I think are very disconcerting because of what they would mean to every American in this country. But given what we have seen, I think it is important that we have something to go by, and clearly the report of the Commission deserves our consideration.

I am very interested in hearing the testimony of our panelists. Today we have eight distinguished speakers that will come before us, and I am very interested to hear what they have to say, and most specifically interested to hear what they have to say with regard to a national registry and its impact on the people of this country.

With that, let me turn to my colleague from Texas, Mr. Bryant, for any opening comment he might have.

Mr. BRYANT. Thank you, Mr. Chairman. I have no opening statement.

Mr. BECERRA. OK. Let me turn to my colleague from Florida and ask Mr. Smith if he has any opening comments he would like to add.

Mr. SMITH. Mr. Chairman, what I would like to do is read into the record a statement by our ranking Republican, Bill McCollum of Florida, and associate myself with these remarks.

Thank you, Mr. Chairman. I am pleased to participate in today's hearing on the Employment Verification System of the Immigration and Nationality Act. One of the most important ways to prevent illegal immigration to this country is to eliminate one of the strongest magnets that draws illegal immigrants here: the prospect of finding a job in the United States. By many accounts, the employer sanctions provi-

sions of the INA appear to have helped deter immigration by reducing the labor demand for illegal alien workers. I welcome proposals to verify this fact through studies that will update the GAO report of 1990. More importantly, I welcome proposals to strengthen the employer sanction provisions and I look forward to hearing the testimony of our witnesses today on this issue.

In considering the issue of employer sanctions, I believe that we must bear several points in mind. While it is appropriate to require employers to verify the employment eligibility of all potential employees, we should make the process as simple as possible while still keeping it effective. I note that there are presently 29 different types of documents that potential employees may present to employers to prove identity, to prove the right to work, or both. Employers can hardly be expected to be document experts. And so, we are requiring employers to accept any of 29 different types of documents, not only makes employee verification a complicated, time-consuming process, but also actually facilitates document, fraud and discrimination. I look forward to the witnesses comments on that proposal to significantly reduce the number of documents that potential employees may present to employers.

In a similar vein, I point out that no matter what the list of acceptable documents may be, it is vitally important to find ways to prevent illegal aliens from obtaining fraudulent documents. I support the concept of a hardened, more tamper-proof Social Security card for this purpose. I also support the creation of a nationwide telephone system whereby employers can verify the information on a Social Security card or some other identifying document when these documents are presented to them by a potential employee.

I have cosponsored a bill, H.R. 4557, that would establish such a system. Mr. Chairman, I also note that 2 weeks ago the House passed H.R. 783, the Immigration and Nationality Technical Corrections Act of 1994. That bill contains provisions which would continue the existing Presidential demonstration project under which such a telephone verification system is now being tested.

I believe it is time for such a system to be tested on a much larger scale, perhaps in those States with the greatest illegal immigrant population. It may be that the testimony of today's witnesses, and the recommendations of the U.S. Commission on Immigration Reform which appeared before the Congress last Friday, will lead us to the conclusion that it is time to implement such a system nationwide.

I welcome the witnesses scheduled to appear before us today. I am looking forward to hearing their testimony on this important issue.

Mr. Chairman, let me also add that I would hope that the various panelists today would address the recommendations directly of the Commission on Immigration Reform, particularly as was mentioned earlier by yourself, the idea of the computer registry. I notice that in a Washington Post article on Saturday, and in regard to the Commission's recommendations, Barbara Jordan was quoted as saying, or the actual article reads, arguing that Clinton has the authority to act immediately on his own, she said, "if he wants to say we like these recommendations, let's start the pilots, he could start it tomorrow." Where the administration has been quoted as saying they like the recommendations, they just don't like the way the recommendations are implemented and the goals are achieved.

I would say to the panelists today, I would hope that you would address this situation and come up with solutions to the problems that the Commission has so accurately pointed out. If you don't like the recommendations of the Commission, what suggestions do you have to solve the problem? This idea of a registry that would be set up in five States as a test program, I think oftentimes has an appeal across politically philosophical parts of Congress, and I say that because I can remember last year when we talked about the idea, we had individuals who I hope would not be offended by being labeled liberals, but individuals such as Barney Frank saying that there was no other way to reduce the problem of discrimination in the workplace, and I happen to agree that that is the only way that I am aware of that we could eliminate discrimination and also

avoid the problem, massive problem, according to the INS, of 50 percent of illegal aliens obtaining jobs using fraudulent documents.

So if we are going to admit that there is a problem, I hope that we will address honestly and sincerely the question of how do you solve that problem, and I hope that we will hear from our panelists today, what their approach is and whether or not they agree with the Commission's recommendations.

Thank you, Mr. Chairman.

Mr. BECERRA. Thank you very much. And let's now proceed with the panelists, but before I do that, let me, for the record, submit the opening statement of Chairman Mazzoli who again, will be back later on we hope in time to assume the Chair before the two panels are concluded.

[The opening statement of Mr. Mazzoli follows:]

OPENING STATEMENT OF CHAIRMAN MAZZOLI
HEARING ON EMPLOYER SANCTIONS
OCTOBER 3, 1994

THIS IS OUR THIRD HEARING THIS CONGRESS ON
EMPLOYER SANCTIONS.

WHEN THIS HEARING WAS ORIGINALLY SCHEDULED LAST
THURSDAY, WE WERE GOING TO HEAR FROM BARBARA JORDAN,
THE CHAIRWOMAN OF THE COMMISSION ON IMMIGRATION
REFORM, REGARDING THE COMMISSION'S RECOMMENDATIONS
TO IMPROVE THE EMPLOYER SANCTIONS LAWS. WE HAD TO
RESCHEDULE THIS HEARING AND UNFORTUNATELY MS. JORDAN
IS UNABLE TO BE HERE TODAY.

HOWEVER, MUCH OF THE TESTIMONY WE WILL RECEIVE
TODAY WILL DISCUSS THE COMMISSION'S RECOMMENDATIONS,
WHICH WERE FORMALLY TRANSMITTED TO CONGRESS LAST
FRIDAY. SOME OF THE WITNESSES WILL ALSO COMMENT ON
A BILL I HAVE INTRODUCED, H.R. 3362, TO IMPROVE THE
EMPLOYER SANCTIONS LAWS.

I AM PLEASED THAT ONE OF THE FIRST TOPICS THAT THE COMMISSION HAS TACKLED IS IMPROVING THE EMPLOYER SANCTIONS LAWS. I AM EQUALLY PLEASED THAT THE COMMISSION'S RECOMMENDATION FOR IMPROVING EMPLOYER SANCTIONS IS IN SYNC WITH IDEAS PREVIOUSLY ADVANCED BY THE SENIOR MEMBERS OF THIS SUBCOMMITTEE.

ON MAY 3, 1994, CHUCK SCHUMER, BILL MCCOLLUM AND I WROTE THE PRESIDENT, ENCOURAGING HIM TO USE HIS AUTHORITY UNDER IRCA TO IMPROVE THE EMPLOYMENT VERIFICATION SYSTEM.

THE VERIFICATION SYSTEM, WITH ITS VAST ARRAY OF DOCUMENTS THAT CAN BE PROFFERED TO PROVE IDENTITY AND EMPLOYMENT ELIGIBILITY, HAS LONG BEEN RECOGNIZED TO BE THE ACHILLES HEEL OF THE SANCTIONS LAWS. IF WE HAD A SIMPLER, MORE SECURE VERIFICATION SYSTEM, WE WOULD BOTH INCREASE THE EFFECTIVENESS OF SANCTIONS AND DECREASE DISCRIMINATION.

THE GAO RECOMMENDED SIMPLIFYING THE VERIFICATION SYSTEM IN ITS 1990 REPORT TO CONGRESS AND IN TESTIMONY BEFORE THIS SUBCOMMITTEE LAST WEEK.

THE 1993 REPORT OF THE COMMISSION ON AGRICULTURAL WORKERS ALSO RECOMMENDED "ENHANCED ENFORCEMENT OF EMPLOYER SANCTIONS" AND A "BETTER EMPLOYMENT ELIGIBILITY AND IDENTIFICATION SYSTEM."

SIMILARLY, THE COMMISSION ON IMMIGRATION REFORM NOW RECOMMENDS DEVELOPMENT AND IMPLEMENTATION OF A SIMPLER, MORE FRAUD RESISTANT SYSTEM FOR VERIFYING AUTHORIZATION TO WORK. SPECIFICALLY, THE COMMISSION RECOMMENDS THAT A COMPUTERIZED REGISTRY BE USED TO VERIFY AUTHORIZATION, USING THE SOCIAL SECURITY NUMBER.

THE COMMISSION FURTHER RECOMMENDS THAT THE PRESIDENT USE HIS AUTHORITY UNDER IRCA TO

IMMEDIATELY INITIATE A PROGRAM TO IMPLEMENT SUCH A VERIFICATION SYSTEM IN THE FIVE STATES WITH THE HIGHEST LEVELS OF IMMIGRATION.

SINCE THE PASSAGE OF IRCA IN 1986, NO PRESIDENT HAS USED THE AUTHORITY SPECIFICALLY GRANTED HIM BY IRCA TO IMPROVE THE VERIFICATION SYSTEM. I HOPE PRESIDENT CLINTON SERIOUSLY CONSIDERS USING THIS AUTHORITY, AS RECOMMENDED BY MYSELF, CHUCK SCHUMER, BILL MCCOLLUM AND NOW THE COMMISSION, BECAUSE IT PROVIDES AN ENORMOUS OPPORTUNITY TO STRENGTHEN EMPLOYER SANCTIONS AND PREVENT ILLEGAL IMMIGRATION.

I THINK THE NOTION OF IMPROVING THE VERIFICATION SYSTEM MUST BE GIVEN STRONG WEIGHT AND CREDIBILITY SINCE GAO, THE AGRICULTURAL COMMISSION, AND NOW THE COMMISSION ON IMMIGRATION REFORM, ALL RECOMMEND DOING SO. THE RECOMMENDATIONS OF THESE THREE

ORGANIZATIONS ALSO REINFORCE THE NOTION THAT WE SHOULD ACT TO IMPROVE SANCTIONS, NOT REPEAL THEM.

THE BILL I INTRODUCED, H.R. 3362, TAKES A MORE GRADUAL APPROACH TOWARD SIMPLIFYING THE VERIFICATION SYSTEM BY REDUCING FROM 29 TO 7 THE NUMBER OF TYPES OF DOCUMENTS THAT CAN BE USED FOR EMPLOYMENT VERIFICATION PURPOSES. IT MAY TAKE SOME TIME FOR THE EXECUTIVE BRANCH TO ESTABLISH A NATIONWIDE DATA BASE AND I BELIEVE THAT SOME IMPROVEMENTS NEED TO BE MADE IMMEDIATELY TO SIMPLIFY THE VERIFICATION SYSTEM.

I LOOK FORWARD TO HEARING OUR TESTIMONY TODAY AND YIELD TO THE GENTLEMAN FROM FLORIDA FOR ANY OPENING STATEMENT HE MAY HAVE.

Mr. BECERRA. Again, we are trying to get as much information as we can on the whole issue of employer sanctions. This is a continuing oversight hearing on that matter, and, gentlemen, for that reason I welcome the three of you here today.

Why don't we begin with Mr. Anderson and, Dr. Anderson, if you would go ahead and enlighten us a bit on your thoughts on employer sanctions and what you have seen from the report issued by the Immigration Reform Commission.

STATEMENT OF BERNARD ANDERSON, ASSISTANT SECRETARY, EMPLOYMENT STANDARDS ADMINISTRATION, DEPARTMENT OF LABOR

Mr. ANDERSON. Thank you, Mr. Chairman. Let me begin by thanking you for the invitation to appear today to discuss the Department of Labor's role and experience in implementing its responsibilities under the employer sanctions provisions of our immigration laws.

In the interest of time, we have submitted a full written statement that I would hope will be made a part of the record of the hearings, but I would like to summarize that and then submit to whatever questions you and other Members of the subcommittee would have.

Effective sanctions against employers who hire unauthorized workers combined with more effective labor standards enforcement are essential components of the Nation's overall strategy to counteract the lure of U.S. jobs for unauthorized workers. At the same time, changes are needed to make sanctions more effective if they are ever to fulfill their promise of deterring illegal migrants in search of jobs in this country.

The administration has already begun to take actions designed to strengthen employer sanctions. I will attempt to describe the Labor Department's role and the results of our activities in enforcing employer sanctions.

Two agencies in the Department's Employment Standards Administration, the Wage and Hour Division and the Office of Federal Contract Compliance Programs (OFCCP) carry out the Department's employer sanctions-related responsibilities in conjunction with their primary and much broader enforcement responsibilities for ensuring compliance with labor standards and nondiscrimination and affirmative action laws and requirements. Together, these agencies conduct more than 65,000 labor law enforcement actions each year. These actions are compatible with the goal of employer sanctions since compliance with basic worker protections removes some incentive for employers to hire unauthorized workers and therefore reduce the magnet of jobs in the United States.

At the same time, our sanctions-related role creates certain tensions with our primary mission of protecting workers, without regard to their immigration status, to maintain minimally decent workplace standards, and to assure a level competitive playing field. Some believe that even our limited sanctions-related enforcement role discourages highly vulnerable and often exploited illegal workers from seeking our help out of fear of eventual apprehension and deportation.

While the INS has primary responsibility for employer sanctions enforcement, including assessing civil penalties and initiating legal proceedings, Wage-Hour and OFCCP have responsibility along with INS to inspect employers' compliance with their employment eligibility verification and recordkeeping responsibilities under the employer sanctions provisions. These inspections are carried out as part of all our normal onsite labor standards enforcement activities. Our I-9 inspection findings are reported to the INS and instances of apparent disparate treatment in the verification process are reported to the Office of Special Counsel for Immigration-Related Unfair Employment Practices, the OSC.

In an effort to strengthen cooperation, increase coordination, and clarify our respective missions, we entered into a memorandum of understanding (MOU) with INS in June of 1992. This MOU was intended to establish better communications between our agencies and the INS so that the enforcement efforts of each agency would be mutually reinforcing. Under the MOU, we systematically share basic investigative data in areas of mutual interest. Also, INS and departmental investigators have been jointly trained to recognize possible violations of laws under each other's respective jurisdiction.

From the Labor Department's perspective, the most significant aspect of the MOU is that it authorizes our investigators to bring violating employers into compliance by, among other things, issuing warning notices when we find evidence of employment eligibility verification violations. Employers must certify that they have come into compliance within a prescribed period, and those who fail to do so are brought to the attention of the INS which can proceed to issue a notice of intent to fine.

When our agencies conducted joint MOU training with INS last year, an important part of the training was to renew the focus on IRCA's antidiscrimination provisions and the process for the Labor Department's referral of suspected violations to the OSC.

The agencies' relationships under this MOU are not without problems, in large part due to the mission tension I have described. But we are committed to working with INS to improve the effectiveness of our relationship in a way that is compatible with the Department's fundamental worker protection mission and supportive of our employer sanctions responsibilities.

When you compare our compliance inspection results to those of the INS, the results of our overall employer sanctions enforcement activities indicate lower levels of compliance than INS. From fiscal year 1988 through fiscal year 1993, INS conducted over 68,000 inspections of compliance with the employer sanctions provisions and found in aggregate over 60 percent of employers in compliance. The INS data show higher compliance rates when only its random investigations are considered, having steadily increased from 50 percent in fiscal year 1988 to almost 90 percent in fiscal year 1993.

Since September 1, 1987, we have completed more than 260,000 inspections and found only an aggregate 40 percent overall employer compliance rate. If the 15 percent of cases where we were unable to determine employer compliance are disregarded, the aggregate employer compliance rate was still under 50 percent.

We believe there are three reasons why our findings show compliance rates lower than those of the INS. First of all, our agencies, unlike INS, have historically recorded the employer's compliance status at the time our inspection is conducted, rather than at the conclusion of interaction with the employer and after educational assistance efforts to bring the employer into compliance.

Second, Wage and Hour investigations are primarily driven by leads obtained from workers. Seventy-five percent are based on complaints of alleged labor law violations. Therefore, our sample of employers is weighted toward employers more likely to be violating labor laws.

Third, Wage and Hour has been increasingly concentrating its overall enforcement in low-wage industries, such as the garment industry, agriculture, and retail and service establishments, where employers have historically been more likely to violate employment standards, including the employer sanctions provisions. This reasoning is supported by comparing the compliance rates of Wage and Hour with OFCCP, which conducts reviews of Federal contractors who tend to be more knowledgeable about their labor law responsibilities than employers with whom the Wage-Hour Division deals. While Wage-Hour found just over 40 percent employer compliance in its inspections this fiscal year, OFCCP found almost twice that rate, or about 80 percent employer compliance.

We believe that these findings demonstrate persistent employer sanctions compliance problems, at least among employers in low-wage industries and those most likely to violate labor standards laws. Our findings reinforce the conclusion that employer sanctions need to be improved. Examined over time, however, there are small, but encouraging signs regarding employers' compliance levels, indicating improvements in compliance, even among employers most likely to violate the law. Beginning in fiscal year 1988, our data indicate a steady but slow increase in employer compliance, from under 44 percent in fiscal year 1988 to a little over 60 percent for the first three quarters of this fiscal year.

The antidiscrimination portion of our employer sanctions enforcement program includes efforts to detect and prevent employer sanctions-related employment discrimination. Shortly after IRCA's enactment, the Labor Department began efforts to educate employers and workers about the law's requirements, specifically including its antidiscrimination provision, through the development and distribution of informational materials and the provision of compliance assistance.

The Department has devoted substantial resources to distributing hundreds of thousands of copies of these materials and providing education and technical assistance regarding the antidiscrimination provisions of the law. To date, we have also referred 68 cases of apparent disparate treatment to the OSC.

More than 7 years after IRCA's enactment, it is obvious that IRCA's employer sanctions provisions must be strengthened to diminish the lure of employment for illegal migrants in the United States. The results of our employer sanctions enforcement support this view.

We firmly believe that an effective employer sanctions program is crucial to our efforts to control illegal migration. Our challenge

is to achieve a consensus on how best to solve the problems with employer sanctions and improve our enforcement of the anti-discrimination provisions.

While I am encouraged that our compliance activity shows slow but steady improvement, fundamental problems remain which limit how effective employer sanctions can be.

The most serious problem I believe is the current employment eligibility verification process. Employer compliance with work authorization verification responsibilities has little meaning if counterfeit or fraudulent documents to demonstrate employment eligibility are so easily obtained, therefore, effectively frustrating and undermining the verification system. Moreover, confusion and wariness about the validity of documents only enhances the potential for discrimination against those who appear foreign-looking or speak with an accent. As INS testified last week, the administration is working to increase document security, limit the number of acceptable documents for establishing work authorization, and expand the telephone verification system.

We at the Department of Labor are committed to seeing employer sanctions work, and we will continue to do our part to see to it that employers are aware of and comply with their responsibilities and their obligations not to discriminate in the process of meeting these responsibilities.

This concludes my oral statement, Mr. Chairman, and I would be happy to answer questions, along with my colleagues. Thank you.

Mr. BECERRA. Thank you, Dr. Anderson.

[The prepared statement of Mr. Anderson follows:]

STATEMENT OF BERNARD E. ANDERSON
ASSISTANT SECRETARY
EMPLOYMENT STANDARDS ADMINISTRATION
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL LAW,
IMMIGRATION AND REFUGEES
OF THE HOUSE JUDICIARY COMMITTEE

October 3, 1994

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear today to discuss the employment eligibility verification system, and to bring you up-to-date on the Department of Labor's role and experience in implementing its responsibilities under the "employer sanctions" provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA).

The lure of jobs in the U.S. remains the single most compelling incentive for illegal migration into the U.S. Effective sanctions against employers who hire unauthorized workers -- combined with more effective minimum labor standards enforcement -- remain essential components of an overall strategy to counteract this lure of U.S. jobs.

Mr. Chairman, most people believe that employer sanctions as currently implemented are not fully effective. Nonetheless, the Administration believes that employer sanctions are an essential part of the Nation's strategy to control illegal immigration. At the same time, it recognizes that changes are needed to make sanctions more effective if they are ever to fulfill their promise of deterring illegal migrants in search of jobs in the U.S. In fact, the Administration has already begun to take actions designed to strengthen employer sanctions. These include:

- * seeking increased resources for the Immigration and Naturalization Service (INS)

employer sanctions enforcement efforts to prosecute document counterfeiters and employers who repeatedly hire unauthorized workers;

- incorporating fingerprint data into work authorization documents to allow the capability to verify work authorization electronically;
- pilot testing a telephone verification system which could aid employers in verifying work authorization;
- reducing the number of documents to be relied upon by employers to verify work authorization; and
- enhancing antidiscrimination efforts to ensure legal residents are not unfairly denied employment.

The Administration is looking forward to reviewing the Commission on Immigration Reform's report and to discuss how its recommendations could be applied to improve the employment verification systems. The Administration plans to carry out a multi-agency effort to address employer sanctions issues and enhance enforcement capabilities. From the beginning, the Department of Labor has conscientiously attempted to fulfill its responsibilities for ensuring employer compliance with these provisions. And we will be a very active participant as the Administration continues to develop and enhance enforcement of employer sanctions.

Let me briefly describe the Department's role and the results of our activities in enforcing employer sanctions. Hopefully, our experience will be beneficial in ongoing deliberations about the changes needed to strengthen the application and effectiveness of employer sanctions.

Role of the Department of Labor

As you know, under IRCA the Department of Labor is involved in the enforcement

of employer sanctions, including its prohibition against sanctions-related discrimination. The Department's role in implementing employer sanctions relates quite naturally to certain interrelated and fundamental concerns directly related to our mission of protecting workers. Illegal migration heightens the potential for exploitation of all workers in the U.S. The presence of significant numbers of unauthorized workers in the U.S. can adversely affect the wages and working conditions of U.S. workers as well as immigrants authorized to work in the U.S., especially in firms and economic sectors where unauthorized workers concentrate, and can discourage cooperative labor-management relations. Also, as one of the primary Federal civil rights enforcement agencies, the Department seeks to detect and prevent employment discrimination, including discrimination attendant to employer sanctions, which is no less invidious than any other type of employment discrimination.

Two agencies in the Department's Employment Standards Administration -- the Wage and Hour Division (Wage and Hour) and Office of Federal Contract Compliance Programs (OFCCP) -- carry out the Department's employer sanctions-related responsibilities in conjunction with their primary and much larger enforcement responsibilities for ensuring compliance with labor standards and nondiscrimination and affirmative action laws and requirements. Wage and Hour administers and enforces a variety of laws which establish standards for wages and working conditions for most of the nation's workers, including the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act. OFCCP enforces nondiscrimination and affirmative action requirements applicable to Federal contractors under E.O. 11246 and other laws which together prohibit discrimination and require affirmative action for minorities, women, the disabled and Vietnam Era veterans. In carrying out their

responsibilities, the two DOL agencies conduct more than 65,000 labor law enforcement actions each year which are compatible with the goal of employer sanctions since compliance with basic worker protections removes some incentive for employers to hire unauthorized workers and, therefore, reduce the magnet of jobs in the U.S.

At the same time, our sanctions-related role creates certain tensions with our primary mission of protecting workers, without regard to their immigration status, to maintain minimally decent workplace standards and assure a level competitive playing field. In this regard, some believe that even our limited sanctions-related enforcement role discourages highly vulnerable and often exploited illegal workers from seeking our help out of fear of eventual apprehension and deportation.

While the INS has primary responsibility for employer sanctions enforcement (including assessing civil penalties and initiating legal proceedings), Wage and Hour and OFCCP have responsibility, along with INS, to inspect employers' compliance with their employment eligibility verification and recordkeeping responsibilities under the employer sanctions provisions. Such inspection is carried out as part of all our normal on-site labor standards enforcement activities. Both DOL agencies report their I-9 inspection findings to the INS and, where there is apparent disparate treatment in the verification process, they report this to the Department of Justice's Office of Special Counsel for Immigration-related Unfair Employment Practices (OSC).

It should be noted, however, that the Labor Department's agencies do not have responsibility to determine the immigration status -- legal or not -- of employees as they enforce laws affording protections to employees without regard to their immigration status. Rather, our focus is entirely on compliance with the obligations of employers. Our staff has no role in seeking to identify, apprehend and deport unauthorized workers,

and such a role -- even indirectly -- would be entirely counterproductive to our primary mission. Nor do the DOL agencies have any authority under IRCA to impose sanctions on violating employers. As I have already indicated, this authority is reserved to INS. Our role in ensuring compliance under employer sanctions has always been and remains limited to inspecting compliance with employers' legal responsibilities.

From the outset, there has been a mechanism for the transmission of compliance information to the INS and an informal working relationship between our agency and the INS. To strengthen cooperation and coordination, to clarify our respective missions, and to better utilize the expertise of both INS and the Department, we entered into a Memorandum of Understanding (MOU) with INS in June of 1992. This MOU was intended to establish better communications between our agencies and the INS, at all levels, so that the enforcement efforts of each agency would be mutually reinforcing. Under the MOU, we systematically share basic investigation data in areas of mutual interest. INS and Departmental investigators have been jointly trained under the MOU to recognize possible violations of laws under each other's respective jurisdiction, sharpening our mutual ability to provide meaningful leads.

From the Department's perspective, probably the most significant aspect of the MOU is that it authorizes our investigators to bring violating employers into compliance, by, among other things, issuing "warning notices" when we discover evidence of employment eligibility verification violations. Employers are required to certify to the Department that they have come into compliance within a prescribed period, and those who fail to do so are brought to the attention of the INS, which can proceed to issue a Notice of Intent to Fine.

When our agencies conducted joint training with INS staff on the procedures of

the MOU last year, a significant aspect of the training was to renew the focus on IRCA's anti-discrimination provisions and the process for the Department's referral of suspected violations to the Department of Justice/OSC. Our joint training teams sought to increase the sensitivity of all investigative staff to potentially discriminatory employment practices.

The agencies' relationships under this MOU are not without problems, in large part due to the mission tension I have described. We are committed to working with INS to improve the effectiveness of our relationship in a way that is compatible with the Department's fundamental worker protection mission.

Results of the Sanctions Efforts

Employer sanctions can never fully stem the tide of illegal migration. In fact, INS estimates the resident unauthorized immigrant population in the U.S. to be approximately 3.8 million and growing at a rate of about 300,000 annually. In addition, employer sanctions have had unintended, but not unanticipated, adverse consequences. Critical among these are sanctions-related discrimination against those legally authorized to work in the U.S. -- both citizens and non-citizens -- and the proliferation of criminal activities relating to widespread document fraud and counterfeiting. The Administration is working to address each of these problems.

Mr. Chairman, the need to strengthen employer sanctions must be placed in proper context. It is, I believe, related to a number of factors, first and foremost being IRCA's basic employer sanctions approach. Other contributing factors include the limited resources which have been available over the past seven years to implement the law, and -- at least to some extent -- the early approach adopted in implementing the law. These factors must, I believe, be kept in mind in assessing the results of sanctions to

date and evaluating the options for needed changes. Let me briefly discuss these factors before describing our employer sanctions enforcement results.

Perhaps the greatest underestimation in the pre-enactment deliberations on IRCA involved the new law's impact on the integrity of the documents on which the basic employment eligibility verification system would rely. Documents used for this purpose are relatively easy to obtain in a fraudulent manner and are prone to tampering to produce counterfeit versions. Clearly the ready availability of fraudulent and counterfeit documentation is the "weakest link" in our system of employment eligibility verification. The Administration is working to reduce the number and increase the integrity of work authorization documents.

IRCA's new employer sanctions requirements also were cautious by design. For example, IRCA required a six-month "education period" before its provisions became effective, with an even more extended effective date (18 months) for agriculture. In addition, the INS -- which had little prior experience dealing with employers except in processing petitions to admit foreign workers -- took an understandably cautious approach at the outset. It initially dedicated significant resources to employer education rather than enforcement, implemented regulations that gave employers at least three days advance notice of an intended inspection, and adopted policies that dictated gradual but progressive enforcement in dealing with violations. As I mentioned, substantial budgetary constraints due to a rapidly growing federal deficit at the time also prevented the application of sufficient additional resources to adequately implement the new law in the short term. This Administration is working to direct sufficient resources to the employer sanctions program.

Thus, both the structure and method of implementation of the new law may have

in the past served to send "mixed signals" to employers and potential illegal migrants. Many employers, while generally becoming aware of their new obligations under the law, soon came to realize that the likelihood of their being investigated for compliance was very small, and the likelihood of suffering significantly as the result of violations would be smaller yet. Compared to the potential economic advantages of employing illegal migrants in many low-wage industries, such employers may well have perceived it to be worth the risk. On the other hand, significant numbers of employers overreacted to the fear of potential sanctions and established employment policies and practices that were in violation of other IRCA provisions, such as hiring only U.S. citizens or rejecting work authorization applicants who appeared to be foreign-looking or sounding. This Administration is working to address discrimination issues as we upgrade and improve our employer sanctions efforts.

The signal that IRCA's enactment sent to potential illegal migrants seems to have been less mixed, but also of relatively short duration. Initially, it appears that sending communities learned fairly quickly of a crackdown on illegal migration, and perceived that sanctions could adversely affect employment opportunities in the United States. Available -- but, at best, indirect -- data indicate that illegal migration diminished somewhat in the years immediately after IRCA became effective, although much of this decrease is attributed to IRCA's legalization program. But, as family reunification immigration proceeded and potential illegal migrants soon learned that neither the likelihood of being apprehended at the border nor employment opportunities upon arriving in the United States were much changed from the *status quo ante*, illegal migration flows soon began to return to their pre-IRCA levels.

With this as background, let me turn to our compliance inspection results. In

doing so, I will contrast our results with those of the INS and attempt to explain the differences between our findings.

From FY 1988 through FY 1993 INS conducted over 68,000 inspections of compliance with the employer sanctions provisions -- both based on leads and referrals, and randomly selected from among all employers -- and found in aggregate about 63 percent of employers to be in compliance. The INS data show higher employer compliance rates when only its random investigations are considered; the compliance rate from such investigations has steadily increased from FY 1988 through FY 1993, from 50 to 89 percent.

The results of the Department of Labor's overall employer sanctions enforcement activities indicate lower levels of compliance. As indicated in Attachment 1, between September 1, 1987, and June 30, 1994, our agencies have completed more than 260,000 inspections assessing employers' compliance with their employment eligibility verification obligations. In these inspections, we found only an aggregate 40 percent overall employer compliance rate. If the 15 percent of cases where we were unable to determine employer compliance are disregarded, we found only an aggregate 47 percent employer compliance rate.

Our findings clearly show compliance rates lower than those of the INS. There are, we believe, reasonable explanations for the differences. One is that our agencies, unlike INS, have historically recorded the employer's compliance status at the time our inspection is conducted, rather than at the conclusion of interaction with the employer and after educational assistance efforts to bring the employer into compliance. Another, we believe, is that Wage and Hour investigations are primarily lead driven, about three-quarters of the time based on complaints of alleged labor law violations. Thus, our

"sample" of employers whose IRCA compliance status is determined -- even though nearly four times larger than INS's -- is weighted toward employers more likely to be violating labor laws. A third is that Wage and Hour has been increasingly concentrating its overall enforcement in low-wage industries -- such as the garment industry, retail and service establishments, and agriculture -- where employers are more likely to violate employment standards, including the employer sanctions provisions. Our data do, however, reenforce data which indicate that employers who violate, or are alleged to violate, labor laws are also more likely to violate immigration laws, especially those aspects of the immigration law that impose labor-related obligations on employers and effectively constitute an "employment standard."

The above reasoning is also buttressed by comparing the compliance rates found by Wage and Hour and OFCCP. OFCCP enforces nondiscrimination and affirmative action obligations of Federal contractors. This category of employers, unlike those in the typical Wage and Hour labor standards investigation, tends to be more knowledgeable about their labor law responsibilities, including those under IRCA's employer sanctions provisions. This is illustrated by comparing the two agencies' compliance rates for the first nine months of this fiscal year. Whereas Wage and Hour found 41 percent of inspected employers to be in compliance, OFCCP found almost 80 percent employer compliance.

Mr. Chairman, our findings demonstrate persistent employer sanctions compliance problems, at least among employers in low-wage industries and those most likely to violate labor standards laws. These data reenforce the conclusion that after seven years employer sanctions need to be strengthened.

If our compliance findings are examined over time, however, there are small, but

encouraging signs regarding employer compliance levels, which indicate some improvement in compliance even among employers most likely to violate the law. Starting in FY 1988, our data indicate a steady but slow increase in employer compliance, from less than 44 percent in FY 1988 to 62 percent through the first three quarters of this fiscal year (in cases where a compliance determination was made).

Our data also indicate encouraging, though again modest, changes in the nature of the violations uncovered in the Department's inspections. For example, when we first began our employer sanctions enforcement activity, 36 percent of our employment eligibility verification investigations resulted in a finding which revealed that the employer had entirely failed to fulfill its IRCA-imposed employment eligibility verification obligation, as opposed, for example, to carrying out the process but doing so incompletely or erroneously. In the first nine months of this fiscal year, however, these violations were down to 17 percent -- less than half of what they were seven years ago.

As noted, the Department's employer sanctions enforcement program also focuses on efforts to detect and prevent employer sanctions-related employment discrimination against both citizens and non-citizens who are legally authorized to work in the U.S. The potential for IRCA-related discrimination has been a concern of the Department from the outset. Our responsibility with respect to IRCA's anti-discrimination provision is twofold -- to detect and report instances of apparent disparate treatment in the verification process to the Justice Department and also to assist in educating employers about their responsibilities. We have always earnestly attempted to discharge these responsibilities.

Shortly after IRCA's enactment, the Department began efforts to educate employers and workers about the law's requirements -- specifically including its anti-

discrimination provision -- through the development and distribution of informational materials and the provision of compliance assistance. In the course of all on-site investigations, we have routinely distributed the joint INS-OSC publication, "Immigration Reform and Control Act of 1986: Your Job and Your Rights" (issued in both English and Spanish versions) and the notice prepared by OSC entitled "What You Should Know." We worked closely with INS and OSC to develop up-to-date educational materials for distribution to the public, employers, and employees.

The Department also utilizes other resources in the public distribution of information regarding IRCA's anti-discrimination provision. These include using the Employment and Training Administration (ETA) network of State unemployment insurance and employment service offices, as well as Job Training Partnership Act grantees. Several State employment service offices are also completing the I-9 paperwork process for employers to which they refer potential employees.

The Department has devoted substantial resources to distributing hundreds of thousands of copies of these materials and providing education and technical assistance regarding the anti-discrimination provision of the law. These efforts have included providing funding for OSC-sponsored outreach efforts and participating in the process of selecting grantees under OSC's educational and outreach grant program.

As previously noted, the Department also reports findings of apparent disparate treatment by employers in the employment eligibility verification process for investigation by the Justice Department. To date, we have referred 68 such cases of apparent disparate treatment to the OSC.

Needed Changes

Mr. Chairman, more than seven years after IRCA's enactment, it is clear that

IRCA's employer sanctions provisions must be strengthened to diminish the lure of employment for illegal migrants in the U.S. The results of the Department's employer sanctions enforcement, I believe, only serve to support this view.

We firmly believe that any effective strategy to control illegal migration must include an effective employer sanctions program. The challenge before us, therefore, is to look to the future to achieve a consensus on how best to solve the problems with employer sanctions and at the same time enforce the antidiscrimination provisions.

As I said, employer compliance remains a problem. But I am encouraged that our compliance activity shows slow but steady improvement. Even with this improvement, however, fundamental problems remain which I believe limit how effective employer sanctions can be. The most serious problem, I believe, is the current employment eligibility verification process. Employer compliance with work authorization verification responsibilities has little meaning if the counterfeit or fraudulent documents needed to demonstrate employment eligibility are so easy to obtain and so effectively frustrate and undermine the verification system. Moreover, confusion and wariness about the validity of documents only enhances the potential for discrimination against foreign-looking and sounding citizens and non-citizens. The Administration is working to increase document security, limit the number of acceptable documents for establishing work authorization, expand the telephone verification system, and modernize and improve the reliability and accessibility of data bases currently used to verify work authorization.

Mr. Chairman, the Department of Labor is committed to seeing employer sanctions work and we will continue to do our part to see to it that employers are aware of and comply with their work authorization verification responsibilities and their obligation not to discriminate in the process of meeting these responsibilities.

We are at an historic crossroads, I believe, in terms of looking anew at how employer sanctions can be made to work better in this country. We now have more than seven years of experience in implementing the current provisions, which has revealed problems in the approach adopted under IRCA. We also have the report and recommendations of the Commission on Immigration Reform which can inform our consideration of necessary employer sanctions reforms.

The Department of Labor, because of its commitment to seeing employer sanctions work and the importance of this program to America's workers, will be an active participant as the Administration examines and develops solutions to the problems with employer sanctions, including developing a better work authorization verification process.

Before I conclude, I would reemphasize that the Department is encouraged by many of the findings and recommendations from the Commission, specifically its call for more vigorous and complementary enforcement of labor standards. Vigorous enforcement of the nation's employment standards help foster a level competitive playing field and thereby serve as a meaningful deterrent to illegal migration by denying some of the business advantage that might be gained through the employment of highly vulnerable and exploitable workers at substandard wages and working conditions. Effective enforcement of the nation's labor laws is an essential component of an overall strategy which might begin to control illegal migration to our country and must be recognized as such -- just like enforcement of a more effective system of employee verification and employer sanctions.

Secretary Reich has established an overall strategy for all of the Department's enforcement programs to focus attention and enforcement resources on efforts to

address the most serious violators and violations, protect the most vulnerable workers, deter violations with more significant penalties, and produce results more swiftly and efficiently. For example, in line with the Secretary's goals, Wage and Hour has developed a strategy to increase the proportion of its investigations which are targeted to low-wage industries -- such as agriculture, the garment industry, janitorial services, restaurants, and others -- and bring a wider variety of enforcement tools to bear to promote higher levels of compliance and deter violations. To a large extent, these efforts focus precisely where many immigrant workers concentrate in the workforce. Similarly, OFCCP will target its enforcement resources to conduct compliance reviews of employers and industries with a history of violations, growth industries, smaller employers and first time contractors. In addition, OFCCP will be working to speed up its enforcement process and expand its sanction options.

Conclusion

Mr. Chairman, employer sanctions can reach its potential to play an important role in controlling illegal migration if it is substantially simplified in operation and enforced firmly. In addition, employers' verification obligations must be implemented in a fair, non-discriminatory manner and, just as important, employer sanctions must be complemented with expanded and better targeted labor law enforcement. Developing an employer sanctions approach and applying it in such a way as to meet these standards is what we must work together to accomplish.

Mr. Chairman, this concludes my prepared testimony. I will be pleased to join my colleagues in answering any questions you or the Members of the Subcommittee may have.

U.S. Department of Labor, Employment Standards Administration
IRCA Employment Eligibility Verification Enforcement Results¹
September 1, 1987, to June 30, 1994 (82 Months)

<u>Annual Compliance Status</u>	<u>FY-87/8²</u>	<u>FY-89</u>	<u>FY-90</u>	<u>FY-91</u>	<u>FY-92</u>	<u>FY-93</u>	<u>3rd Q FY-94</u>	<u>Total</u>
Compliance	16,051 (38%)	17,455 (37%)	18,431 (38%)	14,883 (41%)	15,025 (42%)	13,091 (43%)	8,795 (46%)	103,731 (40%)
Non-Compliance	20,483 (48%)	23,649 (50%)	23,568 (49%)	16,942 (46%)	15,018 (42%)	11,964 (39%)	5,497 (29%)	117,121 (45%)
Undetermined	6,070 (14%)	5,855 (13%)	6,138 (13%)	4,887 (13%)	6,003 (16%)	5,655 (18%)	4,809 (25%)	39,417 (15%)
Total Inspections	42,604	46,959	48,137	36,712	36,046	30,710	19,101	260,269
<u>Cumulative Compliance Status</u>	<u>FY-87/8²</u>	<u>FY-89</u>	<u>FY-90</u>	<u>FY-91</u>	<u>FY-92</u>	<u>FY-93</u>	<u>3rd Q FY-94</u>	<u>Total</u>
Compliance	16,051 (38%)	33,506 (38%)	51,937 (38%)	66,820 (38%)	81,845 (39%)	94,936 (40%)	103,731 (40%)	103,731 (40%)
Non-Compliance	20,483 (48%)	44,132 (49%)	67,700 (49%)	84,642 (49%)	99,660 (47%)	111,624 (46%)	117,121 (45%)	117,121 (45%)
Undetermined	6,070 (14%)	11,925 (13%)	18,063 (13%)	22,950 (13%)	28,953 (14%)	34,608 (14%)	39,417 (15%)	39,417 (15%)
Cumulative Total Inspections	42,604	89,563	137,700	174,412	210,458	241,168	260,269	260,269

¹Source: U.S. Department of Labor, Employment Standards Administration, June 1994.

²Includes the month of September 1987.

Mr. BECERRA. We are going to go ahead and take the testimony of each of the panelists before we do have questions from the Members of Congress. Let's move on now to Dr. Lawrence Thompson, the Deputy Commissioner with the Social Security Administration with the Department of Health and Human Services. Welcome.

STATEMENT OF LAWRENCE H. THOMPSON, DEPUTY COMMISSIONER, SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. THOMPSON. Thank you, Mr. Chairman. I, too, have a complete written statement that I would request be placed in the record. I will summarize.

I am pleased to be here to discuss the Social Security card and the Social Security number in order that we can discuss the role that the card and the number now play or might play in the employment verification system.

The current employment eligibility verification process is composed of two elements: verifying the identity of the job applicant and ensuring that the applicant is authorized to work. Under the current rules, the Social Security card is one of several documents that can be used to establish that an individual is authorized to work in the United States, but it cannot be used to establish the individual's identity.

Without question, improvements could be introduced which would make the card virtually impossible to counterfeit. One must carefully assess the value of these improvements. They would be expensive; they would impose a significant burden on the American people; they would raise important social issues; and they may not be all that effective in preventing work by those not authorized to work. Frankly, without major changes in the nature and appearance of the Social Security card, such as adding pictures and fingerprints, even a card that is totally counterfeit-proof would still not be an effective proof of identity. Moreover, even these enhancements would not prevent the use of false documents to obtain a valid card that verifies an invalid identity.

Let me devote just a few minutes to discussing, first, the card and then the number. The Social Security card is as old as the program. Its original purpose was simply to give people a piece of paper that helped them remember what their number was. The necessary program integrity elements to make sure that benefits were paid to people who actually had worked under the program and deserved benefits were all built in elsewhere in the program. The program didn't rely on the Social Security card as a proof document.

When an individual applies for benefits, we ask for proof of identity, proof of age, and other necessary proofs. We don't rely on the records that were established when the card was issued. We never intended the card to be an identity document; we don't accept it, and, in fact, the early cards used to say: "Not For Purposes of Identification."

Now, we are looking into ways—new and better ways—of serving our customers, our Social Security beneficiaries. In the process of doing that, we may look for a new style card, which would help us

give better service, but it is, again, not because it would improve the ability to use it as an identity card.

Over the years the improvements in the card's integrity have been motivated largely by the fact that the card and number came to be used for purposes other than the original Social Security, social insurance purpose. These include verification of the SSN for purposes other than Social Security, such as those involving State welfare programs and other benefit programs and alien work eligibility issues.

Over the years, we have gradually introduced improvements to the card. First, we established greater emphasis on the need to prove your identity when the card was issued. This came in the late 1970's. Prior to 1978, individuals who walked into a Social Security field office filled out a form alleging who they were, when they were born, and the other identifying information and were given Social Security cards without requiring that the information be verified. Beginning in 1978, we began to request verification.

The card has been made more counterfeit-proof in several iterations. The last iteration, in the late 1980's, produced a card which is probably more counterfeit-proof than a \$20 bill. But a problem still exists. You and I will still accept counterfeit \$20 bills, because we, as individuals, may not understand all of the little sophisticated pieces that are built into that bill to help us recognize whether it is counterfeit. And that same situation exists with the currently issued Social Security cards. Our trained field office representatives can pick out a counterfeit one from a genuine one, but I am not sure that the average employer could tell the difference.

In the 1980's, we augmented the card with a legend that indicates whether the individual holding the card is an individual who is not authorized to work. Many of our cards are issued to people who at the time we issue the card we know are not authorized to work in the United States.

There has been in the history of the evolution of the card a tension in public policy debates, between the desire to prevent fraud and a desire to avoid a new identity document which violates basic U.S. social traditions and the public's own self-image of how our society works, a desire to avoid a burden on the public by forcing everyone to come in and reestablish their identity and to be reissued a card, and a desire to avoid an expense. Reissuing cards to the entire population could run easily from \$3 billion to as much as \$6 billion in one-time costs, most of that associated not with the new cards, but with the process of verifying identity all over again.

The result of this tension between the desire to use the card and the concerns about the expense and burden of reissuing it has been a series of compromises which have left the system not as effective as it might be. We have never reissued cards to all current cardholders, which means that every card issued since 1937 is still a valid card. That means that all of the recent anticounterfeit protections are only effective for the people who have been issued the card recently. In other words, it can be totally counterfeit-proof, but you could still come in with a counterfeit of a card issued in 1955 and it is a valid card.

We are under a mandate from the Congress not to increase the identifying information placed on the card. The card right now sim-

ply displays your name and your Social Security number, and we can't change that without 2 years notice to the Congress.

Finally, there has been some effort, but little systematic effort, to improve the reliability and the quality of what we call the breeder documents, that is to say, birth certificates that are issued by States. People come in with these documents to prove their age and their identity. There are problems with fraud and counterfeit documents there. Of course, if you have a counterfeit birth certificate and you did a good job of counterfeiting a birth certificate, we may issue you a valid Social Security card based on the invalid document.

The current process of issuing the card focuses, first of all, on children born in the United States. Currently, in all but about three States, we offer the parents of each newborn child the option of having the child's Social Security number issued at the time that the birth certificate is issued. About 85 percent of the people offered that option take us up on it. And, of course, the current income tax rules encourage everyone to get Social Security numbers for their dependents before the dependents are 1 year old, because you have to have a Social Security number in order to be claimed as an exemption on the income tax return.

Also, when we issue a card, we cross-reference birth certificate information to information in our own files. Thus, the earlier that we issue a card on a given birth certificate the more difficult—the more unlikely it is that somebody will ever be able to obtain that certificate and get a second card fraudulently. If a second attempt were made, our system would alert our people to the fact that a number had already been issued to a person born with that name in that city on that date, and then we would have to check to find out if there were two people born with that name in that city on that date with those parents.

We also require people who reach the age of 18 and come in to apply for a Social Security card to have a personal interview with one of our claims representatives. The purpose of the interview is to determine how they got to the age of 18 without having a Social Security card and number. They have to have a pretty good story as to how they could have survived in our society that long before we will issue them a card.

We are focusing on further improving the enumeration at birth process. In fact, the State of California has just started participating. It was the one major State that wasn't under the program. We now have New York City, and the rest of New York State. So we are working on the last few holdouts there, and we are working with the INS to try to improve the method by which we issue Social Security cards to legal immigrants as they come into the country.

We are working in New York on colocation with INS. We have worked from time to time with INS on trying to develop a system in which they would issue the Social Security card so that we do not have to rely on INS documents that people bring into our field offices.

If I could just speak briefly to the number. The card, of course, contains the number. The original purpose of the number, like the card, was simply to maintain our records. It was never set up to

be a universal identifier, and anybody who is in the business of designing universal identifiers takes one look at our numbers and says, this is an ineffective numbering system if you want it to be a universal identifier. Of course, over time, the fact that virtually everyone had this number made it a convenient way of organizing records, not only Social Security records, but all kinds of records, that public and private sector people maintained.

It is the only thing that we have in this country that approaches a computerized universal identifier, and so the computer revolution creates not only a lot of pressure to use it for a lot of different purposes, but of course at the same time creates also a tremendous concern over personal privacy and the possible dangers that people will match data from different data bases and learn more about individuals than it is appropriate for them to know.

So once again, we have a tension which has existed throughout history on the use of the number. Interestingly enough, an Executive order was in effect throughout the 1950's and 1960's which mandated that all Federal programs that needed a numbering system use the Social Security number. It was at that time that the Department of Defense issued SSN's for military purposes, sort of a military ID number. The IRS started using it for income tax and for all tax purposes and so forth.

After 1976, the law mandated in fact that no State or local government could deny benefits to somebody who didn't give them their number. So the law tried to break the link between the number and state and local benefit programs.

Since 1974, there has been a steady stream of exceptions enacted by the Congress, inconsistent with the prohibitions on disclosure in the Privacy Act. We don't know whether we want to encourage a universal identifier, but every time we are faced with a situation in which there is a way of perhaps reducing program fraud, if we just did use the SSN, the law tends to respond by authorizing its use.

We have since the beginning of the program always taken the view that it was in our interests to verify the accuracy of someone's Social Security number if they came to an employer and the employer was going to hire them. That is because we want to be able to easily post the wage information as it comes in. It can't be posted if it is a bad number. So we have from the outset been in the business of verifying the accuracy of numbers when employers called us to ask.

Under the current reading of the privacy statutes, what we do is give what we call a positive verification. An employer will call us, he or she will say that he or she has an individual that has come into work, here is the individual's name, here is the individual's Social Security number, here is the date of birth, and here is the gender, and we will verify that all four of those pieces of information match our records or determine that one or two or three do not match our records. That is all we tell them. We don't tell them anything other than it did match or it didn't match and what it was that didn't match.

Employers can call our 800 number we will ask them who they are and we will make sure that we are talking to somebody who

is an employer—and then we will do the verification online over the telephone.

We also have a system in which employers give us computer tapes and we do a batch process. We can do several thousands or 20,000; we even are doing experiments where for a large employer we will verify SSN's for their entire payroll before they submit the end of the year statement to us to make sure they clean up all the errors while they are still easily cleaned up.

As part of the IRCA, we did a pilot in Texas in three cities in which for the express purpose of employment verification of aliens, we had an 800 telephone number at which people called us to ask whether this persons SSN was valid. Now, our data tell whether they were born in the United States; it does not necessarily tell whether they are authorized to work if they were not born in the United States. So we verified what we could verify, but we could not, of course, tell whether the individuals were who they said they were. We could simply verify that there was an individual who did have that Social Security number. That is what we could do. And we did that and reported on that pilot.

We have a couple of improvements under way. We are currently working on expanding the capacity of handling these batch verifications, and we are also looking into various ways to do an online verification, whether it is totally electronic or whether it involves talking to one of our operators. Unfortunately, if you have large volumes of people calling our 800 number that we have to then handle one at a time, it gets to be very expensive, as you can readily understand, so that is a concern.

In conclusion, let me just summarize that the card was designed to be a means of recording the individual's Social Security number and was never intended to be an identity document. We have serious reservations about both the effectiveness and the advisability of trying to make an identity document out of it. We fully understand and share the subcommittee's concerns about improving the employment eligibility verification system, and we will continue to assist employers in verifying the Social Security information we have. We will gladly work with this subcommittee and others to determine what additional steps might be necessary to deal with these important verification issues.

Thank you.

Mr. BECERRA. Dr. Thompson, thank you very much.

[The prepared statement of Mr. Thompson follows:]

STATEMENT ON

**EMPLOYMENT ELIGIBILITY
VERIFICATION SYSTEM**

By

**LAWRENCE H. THOMPSON
PRINCIPAL DEPUTY COMMISSIONER
OF SOCIAL SECURITY**

**BEFORE THE
HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON INTERNATIONAL LAW,
IMMIGRATION AND REFUGEES**

OCTOBER 3, 1994

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here to discuss the Social Security Administration's (SSA) role in the employment eligibility verification system. We look forward to working with you to address your concerns about the system.

The employment eligibility verification process is composed of two elements: verifying the identity of the job applicant and ensuring that the applicant has authority to work. SSA's role in the current work eligibility verification process is limited. It is solely related to the use of the Social Security card as one of several documents that can establish an employee's authorization to work. Certain documents must be submitted by a job applicant to the employer to verify identity and work authorization. Some documents serve as evidence of both of these elements, but most documents establish only one or the other. The Social Security card is in the latter category, indicating only whether the individual named on the card has authority to work.

For a variety of reasons which I will explain in my testimony, it is not feasible to use the current Social Security card for the purpose of establishing that the person in possession of the card is the person to whom it was issued. Furthermore, it would be undesirable, unnecessary, and expensive to develop a technologically enhanced card for this purpose. Perhaps no single document can guarantee identity.

History of the Social Security Card

Let me give you some background on the Social Security card. At the time the Social Security card was devised in the 1930's, its only purpose was to provide a record of the number that had been issued to the individual so that the employer could accurately report earnings for the individual. That is still the primary purpose for which SSA issues the card. It was never intended to serve as a personal identifier--that is, to establish that the person presenting it is actually the person whose name and SSN appear on the card. Thus, the card is essentially merely a piece of paper with a name and number on it. Although we have made it counterfeit-resistant, it does not contain information that allows it to be used to establish identity.

Over time, however, the use of the SSN and Social Security card has greatly expanded, and the card is now used for purposes other than Social Security earnings record maintenance, including as evidence of authorization to work. Society's increasing use of computerized data has led to suggestions to use the SSN and the card as a personal identifier. The card itself, however, is still simply a paper record with a name and number on it.

Prior to 1971, all SSNs were issued based solely on information alleged by an individual. Because of the expanding use of the card for other purposes, there was concern about the integrity of the card. Beginning in 1971, certain categories of applicants were required to provide documentary evidence of age, identity, and alien status. This made it more difficult to obtain a card on the basis of a false identity. However, the card was still no more than a reminder of the number assigned to the individual named on the card. Because of our concern that individuals who had been assigned SSNs for purposes other than work might use the card to obtain unauthorized employment, in July 1974, we began to annotate our records to reflect the fact that an alien had been issued a nonwork SSN. This allowed us to identify, and report to the Immigration and Naturalization Service (INS), instances in which earnings were reported on nonwork SSNs.

Several years later, the integrity of the SSN process was further improved. Since May 15, 1978, all applicants have been required to provide documentary evidence of age, identity, and U.S. citizenship or alien status. Generally, to obtain an original Social Security card, an applicant must submit at least two forms of acceptable evidence of identity, such as a birth certificate and driver's license. Aliens must submit appropriate INS documents to establish lawful status, and, to obtain an unrestricted SSN, evidence they are authorized to work.

Applicants for an original SSN age 18 or over are required to have a personal interview. For those who allege having been born in the U.S., SSA performs additional verification prior to the issuance of an original SSN because most people born in the U.S. have been issued an SSN by the time they have reached age 18.

Enumeration At Birth Initiative

The "Enumeration at Birth" (EAB) program was established in 1989 as another means of improving the SSN process. It is a valuable tool in preventing fraudulent acquisition of an SSN. This program allows parents in the 47 participating States (plus New York City, the District of Columbia, and Puerto Rico) to indicate on the birth certificate information form whether they want an SSN issued to their newborn child. States provide SSA with birth record information about newborns whose parents want a Social Security card for their child, and SSA then assigns an SSN and issues a card. Approximately one-half of the original Social Security cards issued in fiscal year 1993 were processed through EAB. With the addition of the State of California's participation in January 1994, representing approximately 15 percent of the national births, we expect to see a significant increase for fiscal year 1995. This process greatly reduces the potential for someone to use another person's birth certificate to obtain a Social Security card. For example, individuals who present the birth certificate of a child enumerated under EAB would not be issued an SSN, since our records would indicate that an SSN had already been issued to the child named on the birth certificate. As EAB expands, there will be fewer children without SSNs whose birth certificates could be used to obtain an SSN for another person.

Federal income tax laws require that persons age 1 or older claimed as dependents for Federal tax deduction purposes have an SSN. This has created a strong incentive for individuals to obtain an SSN for their children and also reduces the potential for someone else's birth certificate to be used. We must remember that even with these improvements to strengthen the SSN issuance process, the Social Security card is still just a record of the SSN issued and not an identity document.

GAO Analysis of Enhanced Social Security Number Card

From time to time, it has been suggested that the Social Security card could be an effective proof of identity if it were enhanced. Some have proposed such features as a photograph, fingerprint, hologram, or magnetic stripe that would make the card difficult to duplicate.

GAO was directed by the Immigration Reform and Control Act of 1986 (IRCA) to look at this role for the Social Security card. GAO evaluated plastic and polyester card technologies and found that these technologies are two to ten times more expensive than paper cards. In addition, plastic or polyester cards wear out and have to be replaced every few years. In its March 1988 report, the GAO concluded that, even with enhancements, the Social Security card would probably not provide an effective identity system.

GAO also noted that an enhanced card would impose additional burdens on employers, yet provide no guarantee against counterfeiting. Data storage devices require the use of electronic equipment. Off-line readers would merely establish whether or not the name and SSN displayed on the card match the encoded information on the magnetic stripe. On-line systems, linked to a central data base, would be needed to both confirm the name and number match and verify the identifying data the card contains. The magnetic stripe on a plastic card is the technology most in use today. But magnetic stripe readers cost \$100-\$150, which would be a considerable outlay for many employers who would have no other use for the equipment. Also, the commercial availability of readers and coding equipment for magnetic stripes makes this technology highly susceptible to counterfeiting. GAO also pointed out that rapid advances in card technology may quickly obsolete any hi-tech anti-counterfeiting efforts.

Changing the Social Security card by adding a photograph and requiring that it be signed when issued might make it more effective as an identity document, but people intent on fraud can substitute a photograph, modify their appearance or reproduce signatures with practice. In addition, pictures on the card would require updating from time to time because of changes in personal appearance.

More effective biometric identifiers, such as fingerprints, require verification techniques that are expensive and that cannot be applied by nonexperts. A technology that has emerged for linking users to documents is the Personal Identification Number or PIN. Automatic teller machines in particular have popularized this technology. However, incorporating a PIN in a work eligibility document would require the use of card readers and on-line access to a data base matching the PIN with a unique code in a magnetic stripe on the card. Also, law enforcement authorities have found that many users write their PIN on the card or elsewhere in their wallet or purse in case they should forget it. Thus, if the card is stolen, the thief also has the PIN that permits him to use the card.

GAO concluded that the card would not be a good identifier because it does not satisfy three criteria for a reliable identity document. It must be difficult to counterfeit; allow verification that the person presenting the document is in fact the individual to whom it was issued; and, be difficult to obtain fraudulently.

We share GAO's views in applying these criteria to the available documents. It appears that no single document can meet all three criteria, primarily because a determined individual can obtain a counterfeit document or a valid document through fraudulent means. Furthermore, efforts to develop a fraud-proof identity document for employment eligibility verification purposes would require major changes in the process of issuing birth certificates and be very expensive. While it is possible to develop a more counterfeit-resistant Social Security card, aside from the lack of cost effectiveness, there are other reasons why it wouldn't be an effective identity document. Let me elaborate.

False Documents Impede the Security of Social Security Cards

As I mentioned earlier, even if the Social Security card were enhanced, there would be no assurance that the card had been properly issued to an individual. This is because the documents which a Social Security card applicant must present to establish identity--primarily a birth certificate and immigration forms--are relatively easy to alter, counterfeit, or obtain fraudulently.

In 1988, the Office of Inspector General (OIG) of the Department of Health and Human Services (HHS) issued a report entitled Birth Certificate Fraud which examined vulnerabilities to fraud in birth certificate forms and issuance procedures and in procedures of user agencies which receive birth certificates as documentation. The problems found by the OIG included:

- o False birth certificates are used to create false identities:
- o An estimated 7,000 local issuing offices issue some 10,000 different versions of birth certificate forms which may be submitted to user agencies for evaluation; and
- o States have open access to vital records, and there is lax physical security of blank forms and seals, especially in local offices.

In 1991, OIG issued a follow-up report on efforts to control birth certificate fraud. The relevant finding was that the nature and extent of birth certificate fraud appeared to be relatively unchanged since 1988. OIG reported that major weaknesses in the procedures used by issuing agencies continued to hamper the ability of user agencies, both Federal and State, to rely on birth certificates as evidence of identity. The cost of revamping the system by which birth certificates are issued would be enormous, and while some State and local jurisdictions have initiated reforms, most are severely constrained from making major reforms by increasingly limited resources.

Logistics of Reissuance of Social Security Cards

Let me discuss the logistics that would be involved in issuing enhanced Social Security cards to the almost 270 million current card holders. To be effective, a new card would have to be issued relatively quickly to all card holders. Otherwise, they could present earlier versions of the Social Security card and claim they had not yet been issued a new card. The process of verifying identities and reissuing everyone a new, more secure card would be very costly--from \$3 to \$6 billion from general revenues, depending on the security features and issuance procedures. (The \$3-\$6 billion does not include the potential cost to employers.) The additional cost of the secure feature itself (e.g., a bar code or photo) would be relatively small. However, the labor costs associated with interviewing, verifying evidence and producing the card would make the total reissuance cost extremely high.

Issuing new cards to everyone would also be burdensome on the public, as individuals would be required to establish their identity and citizenship or lawful alien status satisfactorily before being issued a new card.

The workload that would result from the issuance of new Social Security cards to all card holders would primarily serve purposes other than the administration of the Social Security program and would be a tremendous challenge for the Agency and its employees. The volume of interviews required to reissue almost 270 million Social Security cards in 5 or even in 10 years could not be handled in SSA's 1,300 local offices, because it would interfere with the ability of the offices to properly serve the people needing help with Social Security problems at a time when the Agency is facing heavy workloads. In addition, Mr. Chairman, you will recall that Section 274A(d)(3)(E) of the Immigration and Naturalization Act provides that any changes made to the Social Security card for purposes of work eligibility must be financed from general revenues and not be borne by the Social Security trust funds.

Nonwork Social Security Cards

I would now like to discuss the role of the Social Security card as evidence of work authorization, which is a separate issue from personal identification. As you know, Mr. Chairman, IRCA makes it illegal for an employer to knowingly hire anyone not legally permitted to work in the U.S.; that is, aliens not authorized to work by INS. Under IRCA, all employers are required to verify a job applicant's identity and authorization to work. Any of a variety of documents specified in the law and in INS regulations can be used for this verification, which is required for all employees, regardless of citizenship or national origin. Some of these documents--such as a U.S. Passport--establish both employment eligibility and identity. Others--including the Social Security card--can be used to establish work authorization, but must be accompanied by an identification document, such as a State driver's license.

Originally, the same Social Security card was issued to all SSN applicants who required one, whether or not they were authorized to work. Beginning in May 1982, a legend, "NOT VALID FOR EMPLOYMENT", was placed on the Social Security cards of aliens not authorized to work to identify nonwork SSNs. This was due to the increasing need for persons to have SSNs for nonwork purposes and concern that such persons could use their SSN for work purposes. These non-employment-related Social Security cards are issued to:

- o Aliens in the U.S. who do not have authorization to work, but who need SSNs for a valid nonwork purpose (such as driver's licenses in some States); and
- o Certain aliens residing outside the U.S. (for example, dependents listed on U.S. income tax returns or individuals entitled to Social Security auxiliary or survivor's benefits).

With this legend appearing on the card, employers were able, for the first time, to distinguish whether an individual was authorized to work. Since September 14, 1992, cards with the legend "VALID FOR WORK ONLY WITH INS AUTHORIZATION" have been issued to aliens lawfully in the U.S. with temporary authority to work. Thus, employers are now able to determine if an alien has exceeded the time limit for his or her work authorization by verifying the alien's current status with INS.

Counterfeit-Resistant Social Security Cards

Originally, due to the limited purpose of the Social Security card, no special efforts were made to prevent them from being counterfeited. However, as counterfeiting became a concern, actions were taken to address this problem. For example, legislation enacted in 1983 required that new and replacement Social Security cards be made of banknote paper and--to the maximum extent practicable--be resistant to counterfeiting. The current card incorporates these and a number of other security features. It is difficult to counterfeit well.

If the Social Security card were the only work eligibility document, it would have to contain features that would allow employers to easily detect counterfeit cards. Some types of humanly readable security features that make the card more counterfeit resistant are already incorporated in the current Social Security card. However, employers would have to look for them and be trained to recognize counterfeit cards. Under current law, employers are only required to make a good faith effort to ensure that documents are genuine, and they are not required to be document experts. But for the same reason that most of us will accept a counterfeit \$20 bill--lack of experience and expertise in identifying a counterfeit--counterfeit Social Security cards may be accepted by employers.

When improved versions of Social Security cards have been developed, they have been issued prospectively only to new applicants because of the prohibitive cost of replacing all cards still in use. Thus, there are now 46 valid versions of the Social Security card in use. Approximately 61 percent of active card holders have been issued a counterfeit-resistant card. But, as I mentioned, previous versions are still valid and employers generally have no reason not to accept them.

SSA's Role in SSN Verification

It is important to keep in mind that the personal identity and Social Security card appearance issues that I have been discussing are quite separate from the issue of SSN verification. By SSN verification, we mean the process by which SSA determines whether a name and SSN match SSA's records, that is, whether SSA issued a given SSN to a given name. This process cannot determine whether the person presenting the name and SSN is, in fact, the person to whom the SSN was issued.

SSA has always had the capability to verify SSNs. In fact, we consider this one of our most important functions, because it is essential to ensure accurate wage reporting and, ultimately, accurate benefit payments. Employers may immediately verify SSNs for payroll purposes by calling our 800-number or local office. This option is also available to employers who want to verify the SSN as part of the employment eligibility verification process. Relatively few employers do so for either purpose, however, because they tend not to question the name and SSN provided by an employee. And although this option is available to employers, neither the 800 number nor local offices are equipped to handle large numbers of SSN verification requests.

With the expansion of the SSN's use over the years, especially as a result of widespread dependence on computers, SSA began to experience more and more requests for SSN verification for purposes other than the Social Security program. Many of these requests were from government agencies for the purpose of ensuring the accuracy of other Federal and State benefit programs, and automated data exchange systems were developed to comply with these requests.

On the other hand, SSA does not verify SSNs for the private sector for purposes other than for employer wage reporting and employment eligibility verification. The law and our disclosure policy are designed to protect individual privacy--a fundamental and widespread concern--and the confidentiality of the SSN because of the potential for its use as a means of unauthorized access to personal records.

One of the systems that was developed to verify SSNs for States is available to employers to verify SSNs for employment eligibility verification purposes. The Enumeration Verification System (EVS), which was designed to carry out SSA's role with respect to the Federal-State Income and Eligibility Verification System (IEVS), verifies SSNs based on data such as name and date of birth. Since the mid-1980's, each State has been required to have an IEVS to match financial information received from public assistance claimants with information in Federal and State data bases so that they can identify claimants who are ineligible or who receive incorrect benefit payments.

Although EVS is used primarily by States, employers may also use EVS to verify SSNs for wage reporting or employment eligibility purposes. However, because EVS consists of a high-volume process, under which the requests are transmitted to SSA by mail on magnetic tape and the results returned to the requestors in about 4 weeks, this system does not allow for immediate SSN verification. Thus, it may not effectively serve an employer's employment eligibility verification needs.

IRCA required the Secretary of HHS to study the feasibility, costs, and privacy considerations of an SSN validation system for employers. From January 1987 through September 1988, SSA tested a telephone system under which employers in 3 Texas cities requested SSN validations orally and received oral responses from SSA employees who had online access to SSA data bases. The test allowed employers to use existing telephone lines and equipment to request SSN validation of prospective employees from SSA and receive an immediate response. This is similar to an employer's calling the 800-number today, except that the test provided for a special staff dedicated to this specific function.

The test results indicated that, although technically feasible, the effectiveness of an SSN validation system in helping employers prevent aliens not authorized to work in this country from gaining employment would be limited, because there is no way to be sure that the job applicant presenting a valid Social Security card is the person to whom it was issued.

SSA is Planning Improvements

SSA is planning several improvements to its role in the employment eligibility verification system. SSA's efforts would provide better service to employers by improving the accessibility of its databases and making it easier to verify SSNs.

First, SSA is expanding the capability of the current EVS to handle more inquiries per day in an attempt to better assist employers and to help State and local agencies verify SSNs of claimants who apply for public assistance benefits.

Second, we are evaluating the cost-effectiveness of using the EVS for annual payroll verifications. As we evaluate the data, we are finding that wage reporting has improved dramatically.

Finally, we are developing an online verification system to test the feasibility of providing instantaneous verification of an employee or job applicant's SSN. This would be particularly helpful to employers who cannot afford to delay the hiring or payroll process.

Conclusion

In conclusion, Mr. Chairman, the Social Security card was originally intended to be nothing more than a means of recording the SSN. Its use for other purposes has provided the incentive to improve the quality of the issuance process and the counterfeit-resistance of the card. However, we do not believe that the

Social Security card can be an effective identity document, and thus would be concerned about the cost of attempting to make it serve that purpose. In addition to the practical problems associated with making the Social Security card an identifier for work eligibility or other purposes, many people have fundamental concerns about the implications of the SSN becoming a universal identifier in this country. Some of these concerns center around questions of individual privacy and the increased possibility of the invasion of that privacy if all records pertaining to an individual could be accessed through one number. Other concerns center around the potential for discrimination based on an individual's appearance, name, or accent.

We fully understand and share the Subcommittee's concerns about improving the employment eligibility verification system. SSA will continue to assist employers in verifying employment eligibility and we will gladly work with the Subcommittee to determine what additional steps are necessary to deal with your concerns.

Mr. BECERRA. Let's move on now to Mr. Ho-Gonzalez, who is Special Counsel for the Office of Special Counsel for Immigration Related Unfair Employment Practices with the Department of Justice. It is his role, of course, with the folks at the Office of Special Counsel to try to track down those who are committing discrimination as a result of employer sanctions.

Thank you for being here. Welcome.

**STATEMENT OF WILLIAM HO-GONZALEZ, SPECIAL COUNSEL,
OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION RELATED
UNFAIR EMPLOYMENT PRACTICES, CIVIL RIGHTS DIVISION,
DEPARTMENT OF JUSTICE**

Mr. HO-GONZALEZ. Good morning. Thank you. Mr. Chairman, we would ask that a copy of my complete statement be submitted for the record and I will read a summary of the statement here today.

I wish to thank you and this committee for the opportunity to address you with regard to the issue of the weaknesses of the employment verification process. In the course of the 2½ years I have served as Special Counsel, I have come to increasingly appreciate the challenge of successfully enforcing the antidiscrimination provisions of the Immigration and Nationality Act, popularly known as section 1324(b) of the Immigration Reform and Control Act, or IRCA.

IRCA requires an understanding of two usually very distinct areas of law: Employment discrimination and immigration. The problem of immigration-related unfair employment practices rarely presents itself in simple terms and never has any easy answers. The Office of Special Counsel for Immigration Related Unfair Employment Practices was created under IRCA and charged with enforcing its antidiscrimination provisions.

From its inception in 1987 until recently, OSC operated as a separate component of the Department of Justice. On April 1, 1994, OSC merged with the Civil Rights Division. The merger not only has the benefit of reducing costs by eliminating the need for two separate administrative units, but permits OSC to draw upon the knowledge and talent of other civil rights attorneys and other resources of the Division. Much more importantly, however, OSC's merger with the Civil Rights Division is an explicit recognition of immigration-related, unfair employment practices as a civil rights issue, which requires as much attention and resources as we devote to stamping out other forms of discrimination.

IRCA generally prohibits discrimination on the basis of citizenship status or national origin with respect to hiring, firing, and recruitment for a fee. Other practices such as retaliation against individuals for exercising their rights under IRCA, and requesting more or different documents than necessary for employment verification purposes, or refusing to accept valid documents, a practice known as document abuse, have also been proscribed.

Protection from citizenship status discrimination applies to U.S. citizens or nationals, permanent residents, temporary residents, asylees, and refugees. All work-authorized individuals are protected from national origin discrimination and document abuse under IRCA.

Document abuse is the most common type of charge handled by our office. In fact, the majority of cases currently handled by OSC involve documentation issues in one form or other.

The usual scenario involves an employer who specifically demands to see an INS-issued identification card of an alien, notwithstanding the fact that the law permits a person to present numerous documents, or a combination of documents to establish his or her work eligibility. The consequences of such demands for specific documentation can be disastrous for the aggrieved person.

An authorized worker may experience the loss of a job due to his or her inability to produce the requested document, and this type of occurrence is frequent. The inability of a work-authorized alien to produce the specific documentation requested may not be that individual's fault, but rather due to the considerable lag of time, sometimes even months, between the application for and actual receipt of replacements for INS documentation. At times, late application filing may also delay the processing and receipt of such documents.

Moreover, there is the problem of employers who demand specific documentation of applicants who are U.S. citizens, merely because the way the person looks or sounds leads the employer to believe that the individual is a foreigner. In the case of the *United States v. A.J. Bart*, a native-born U.S. citizen of Mexican-American descent, was denied employment when she was unable to produce a birth certificate, notwithstanding the fact that she had a valid State identification card and unrestricted Social Security card which suffices under the law to establish work eligibility.

We have seen similar incidents with Puerto Ricans who, as we all know, are U.S. citizens. In fact, one of the first cases handled by our Office was a charge by an employer who had refused to hire a Puerto Rican woman because she could not produce a green card.

The same problems involving document abuse have also been evidenced in the context of the reverification process. OSC can initiate its own investigations concerning violations of the antidiscrimination provisions, and based on such investigations file complaints with an administrative law judge. We frequently open independent investigations based on information found in the course of examining a charge. As of September 8, 1994, OSC had opened approximately 784 independent investigations.

Prior to 1992, OSC did not assess civil penalties, if an alleged discriminating employer was willing to settle a charge without the necessity of filing a complaint before an administrative law judge. If OSC had to file a complaint, it always sought the maximum civil penalties possible. In 1992, we changed this policy to one of examining the appropriateness of imposing civil penalties on a case-by-case basis. The assessment of civil penalties has become an important tool as the Office strives to aggressively accomplish its mission. While the total amounts of civil penalties assessed prior to 1992 have been less than \$45,000, the total amount assessed to date as a result of the change in policy is over half a million dollars.

OSC has also collected to date over \$1.5 million in backpay for individuals who have been aggrieved by violations. Now that we have become a part of the Civil Rights Division, we are making an

assessment of how our enforcement efforts can be made even more effective to ensure that our congressionally mandated mission is accomplished.

One product of that assessment was the recent approval by Deval L. Patrick, the Assistant Attorney General for Civil Rights, of the development and implementation of a testing program which has proven to be a very valuable tool in civil rights enforcement in the area of housing discrimination. OSC also seeks to deter immigration-related employment discrimination through education for employees and employers about their rights and responsibilities under IRCA.

The Office's public education strategy is twofold. First, each year we award grants to nonprofit organizations throughout the country to conduct outreach to their respective communities and/or constituencies. We seek to complement these efforts through national media campaigns and various staff projects.

As with the grants program, the national outreach campaign targets both employers and U.S. workers. For example, the national campaign included the inauguration of an automated employer hotline last March aimed at combating employer confusion over the employment verification requirements of IRCA.

In conjunction with the initiation of the hotline, we ran television, radio and print media advertisements in California, Texas, Florida, New York, Illinois, and Washington, DC. We also ran employee directed advertisements in these States. The same spots were also distributed nationwide as public service announcements.

Notwithstanding the aggressive enforcement efforts and outreach activities to date, the problem with immigration-related unfair employment practices continues. The tide of anti-immigrant sentiment that has swept across the country over the last few years compounds our enforcement efforts.

Such sentiments fan the flames of xenophobia and prejudice that leads to the discrimination against U.S. workers who look or sound foreign. Moreover, the close attention to immigration issues engendered by such sentiments heightens employers' sensitivities to and concerns over, potential liability for the employment of undocumented workers.

The cases we have handled to date demonstrate that in attempting to conscientiously comply with the law and hire only work authorized individuals, many well-meaning employers often find themselves stumbling over the intricacies of the employment verification process and running afoul of the IRCA antidiscrimination provisions.

While we cannot say how extensive the problem of immigration-related unfair employment practices is, our experience indicates that the charges we do receive are but a small sample of the number of such incidents actually occurring.

I would note, for instance, that a telephone poll that was conducted in the Baltimore-Washington metropolitan area last year reported findings that indicate that the incidence of discrimination has become worse than that found by GAO in 1990. For example, 39 percent of local hiring officers indicated that employer sanctions deters them from hiring foreign-born workers. Twenty-three percent said they do not offer jobs to people they perceive to be un-

documented; yet their perception was not based on information obtained through the I-9 verification process.

Finally, 67 percent of the employers surveyed stated they required workers to complete the form I-9 prior to hearing them. Moreover, as far as the Department of Justice is concerned, any form of illegal discrimination is unacceptable and will be aggressively pursued. Nonetheless, we recognize that enforcement and outreach are only part of the answer and that there is a need to explore other options that can effectively meet the legitimate concerns of controlling illegal immigration into this country while minimizing actual or potential discrimination against U.S. workers.

In 1990, GAO concluded at the end of a 3-year assessment that employer sanctions had resulted in a widespread pattern of discrimination. Further, GAO found that the situation was worsening in spite of the educational efforts that had been undertaken up until that date. This finding triggered the creation of a task force to review GAO's findings and to make recommendations for deterring or remedying the discrimination.

In September 1990, that task force issued its report and recommendations for eradicating discrimination identified by GAO. Many of the task force recommendations were subsequently implemented under the Immigration Act of 1990 including the strengthening of the provisions of 1324(b) of IRCA and increased public outreach activities.

However, one particular recommendation that has yet to be accomplished—simplifying the work authorization verification process—is the key to minimizing the discrimination problems that I have mentioned. As I indicated earlier, one of the major factors underlying employer discrimination still is confusion as to what is or is not acceptable documentation. Notably, the recent recommendations of the Commission on Immigration Reform includes a call for the development and implementation of a simpler, more fraud-resistant system for verifying authorization to work. Efforts by the INS to effectuate the recommendation to improve the work authorization verification process are under way.

On March 20, 1995 the I-151 permanent resident cards, popularly known as green cards, issued prior to 1979 will no longer be valid and will be replaced with the current alien registration receipt card form I-551. This will remove from circulation obsolete or fraudulent versions of the green card. INS has also begun the process of reducing the number of documents which are acceptable for employment verification purposes. The proposed rules published on November 23, 1993, would remove 16 of the 29 currently acceptable documents. These actions will help in reducing employer confusion over the work authorization verification process.

As I stated in the beginning, there are no easy answers. Employers' lack of understanding about IRCA's requirements and its discriminatory consequences compel the conclusion that there is a need to improve the form I-9 verification process by reducing the number of documents used to establish work eligibility.

The measures that are taken to achieve that, however, require a critical and considerate balancing of concerns to ensure that in the process of attempting to fix the weaknesses in the employment

verification system, we do not wind up aggravating rather than resolving the current situation of discriminatory practices.

Finally, we are generally aware of other recent proposals and suggestions to address the problems and weaknesses in the employment authorization verification system. If implemented, these proposals could impact our program. Accordingly, we will follow with interest the policy developed, if any, as a result of these proposals.

Thank you, Mr. Chairman. I will be pleased to answer any questions that members of the committee may have.

[The prepared statement of Mr. Ho-Gonzalez follows:]



Department of Justice

TESTIMONY

OF

WILLIAM HO-GONZALEZ
SPECIAL COUNSEL

OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION RELATED
UNFAIR EMPLOYMENT PRACTICES
CIVIL RIGHTS DIVISION
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL LAW, IMMIGRATION
AND REFUGEE AFFAIRS
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

WEAKNESSES IN THE EMPLOYMENT AUTHORIZATION VERIFICATION
SYSTEM ESTABLISHED BY THE
IMMIGRATION AND NATIONALITY ACT

ON

OCTOBER 3, 1994

Mr. Chairman and Members of the Committee:

I am William Ho-Gonzalez, Special Counsel for Immigration Related Unfair Employment Practices at the Civil Rights Division of the U.S. Department of Justice. I wish to thank you and this Committee for the opportunity to address you with regard to the issue of the weaknesses of the employment verification process.

In the course of the two-and-one-half years that I have served as Special Counsel, I have come to increasingly appreciate the challenge of successfully enforcing the antidiscrimination provisions of the Immigration and Nationality Act, popularly known as Section 1324b of the Immigration Reform and Control Act of 1986 (IRCA). IRCA requires an understanding of two, usually very distinct areas of law, i.e., employment discrimination and immigration. The problem of immigration related unfair employment practices rarely presents itself in simple terms and never has any easy answers.

Background

The Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) was created under IRCA and charged with enforcing its antidiscrimination provisions. Most of OSC's enforcement activities arise out of the charges it receives from individuals who believe that they are victims of discrimination. From its inception in 1987 until recently, OSC operated as a

separate component of the Department of Justice. On April 1, 1994, OSC merged with the Civil Rights Division. In joining forces with the Civil Rights Division, OSC can draw upon the knowledge and talent of other civil rights attorneys and other resources of the division.

Also, the merger has the benefit of reducing costs by eliminating the need for two separate administrative units. Much more importantly, however, OSC's merger with the Civil Rights Division is an explicit recognition of immigration related unfair employment practices as a civil rights issue which requires as much attention and resources as we devote to stamping out other forms of discrimination.

Section 1324b prohibits discrimination on the basis of citizenship status or national origin with respect to hiring, firing and recruitment for a fee. Citizenship status discrimination is permitted only under narrow circumstances, for example, when required to comply with governmental regulations. However, an employer is not prohibited from choosing to hire a U.S. citizen over an equally qualified noncitizen.

The Immigration Act of 1990 (IA90) further amended the Immigration and Nationality Act and forbids additional practices as discriminatory. First, it prohibits retaliation against individuals for exercising their rights under IRCA. Next, IA90 also makes it an unfair employment practice to engage in document

abuse, i.e., requesting more or different documents than necessary for employment verification purposes or refusing to accept valid documents, an unfair employment practice.

Protection from citizenship status discrimination applies to U.S. citizens or nationals, permanent residents, temporary residents, asylees and refugees. All work authorized individuals are protected from national origin discrimination and document abuse under IRCA.

Document abuse is the most common type of charge handled by OSC. In fact, the majority of cases currently handled by OSC involve documentation issues in one form or other. The usual scenario involves an employer who specifically demands to see an INS-issued identification card of an alien notwithstanding the fact that the law permits a person to present numerous documents or combination of documents to establish his or her work eligibility. The consequences of such demands for specific documentation can be disastrous for the aggrieved person. A work authorized individual may experience the loss of a job due to his or her inability to produce the requested document, and this type of occurrence is frequent. The inability of a work authorized alien to produce the specific documentation requested may not be the individual's fault, but rather due to the considerable lag of time, sometimes even months, between the application for and actual receipt of replacements for INS documentation. At times, late application filing may also delay receipt of the document.

Moreover, there is the problem of employers who demand specific documentation of applicants who are U.S. citizens merely because of the way the person looks or sounds leads the employer to believe that the individual is a foreigner. In the case of United States v. A.J. Bart, a native born U.S. citizen of Mexican American descent was denied employment when she was unable to produce a birth certificate, notwithstanding the fact that she had a valid state identification card and unrestricted social security card, which suffice under the law to establish work eligibility. We have seen similar incidents with Puerto Ricans, who are U.S. citizens. In fact, one of the first cases handled by OSC was a charge involving an employer who had refused to hire a Puerto Rican woman because she could not produce a "green card."

The issue of document abuse also arises in the context of the reverification process. In United States v. Louis Padnos Iron Metal, an administrative law judge found that the company violated the document abuse provision by discharging a permanent resident whose temporary resident card had expired. The complainant had not received his permanent resident card from the INS, but had presented a genuine state-issued identification card and an unrestricted social security card.

Discrimination based on citizenship status occurs when employers make distinctions among workers in the context of hiring, firing, or referral for a fee, because of their

citizenship or immigration status. In United States v. Kajax Engineering, OSC found that a government contractor had refused to hire a permanent resident from Nigeria upon discovering she was not a U.S. citizen, even though there were no government requirements proscribing the hire of work authorized aliens under the contract. The victim had applied for the same position she had held with the previous agency contractor.

National origin discrimination involves unequal treatment because of a person's place of origin or because that person has certain physical, cultural, or linguistic characteristics of a particular national origin group. OSC's jurisdiction in these types of cases is limited to employers with four to fourteen workers. In Mui v. Oliver's Restaurant, we found that a naturalized U.S. citizen of Chinese descent, had been fired because of her national origin. The victim had been a waitress at a restaurant for 11 years when it underwent a change in management. The waitress was discharged even though the employer acknowledged that she was reliable, punctual, well groomed and provided polite service. The employer claimed that the waitress had a "major language problem" that limited her ability to handle the new menu, even though the waitress' ability to speak English had never been an issue during her previous 11 years of employment.

Employers are also prohibited under IRCA from retaliating against persons who have exercised their rights under the law. OSC has had occasion to enforce this prohibition on several

occasions. For instance, in the case of United States v. Aspen Square Condominium Association OSC settled a charge involving allegations that the employer had made the victim's working conditions intolerable after he had complained about the employer's refusal to accept his valid work authorization documents.

OSC can also initiate its own investigations concerning violations of the antidiscrimination provisions and, based on such investigations, file complaints with an administrative law judge. OSC frequently opens independent investigations based on information found in the course of examining a charge. As of September 8, 1994, OSC has opened 784 independent investigations.

Prior to 1992, OSC did not assess civil penalties if an alleged discriminating employer was willing to settle a charge without the necessity of filing a complaint before an administrative law judge. If OSC had to file a complaint before an ALJ, however, it always sought the maximum civil penalties possible. In 1992, OSC changed this policy to one of examining the appropriateness of imposing civil penalties on a case by case basis. The assessment of civil penalties has become an important tool as the Office strives to aggressively accomplish its mission. While the total amount of civil penalties assessed prior to 1992 had been less than \$45,000, the total amount assessed to date as a result of the change in policy is over \$500,000. OSC has also collected to date over \$1,500,000 in backpay for aggrieved individuals.

Now that we have become a part of the Civil Rights Division, we are making an assessment of how our enforcement efforts can be made even more effective to ensure that our Congressionally mandated mission is accomplished. One product of that assessment was the recent approval by Deval L. Patrick, the Assistant Attorney General for Civil Rights, of the development and implementation of a testing program, which has proven to be a very valuable tool in civil rights enforcement in the area of housing discrimination.

OSC also seeks to deter immigration related employment discrimination through education for employees and employers about their rights and responsibilities under IRCA. The office's public education strategy is twofold. First, each year OSC awards grants to nonprofit organizations throughout the country to conduct outreach to their respective communities and/or constituencies. Second, OSC seeks to complement these efforts through national media campaigns and various staff projects.

As with the grants program, the national outreach campaign targets both employers and U.S. workers. For example, the national campaign included the inauguration of an automated employer hotline (1-800-255-8155, TDD 1-800-362-2735) last March aimed at combatting employer confusion over the employment verification requirements of IRCA. In conjunction with the initiation of the hotline, OSC ran television, radio and print media advertisements in California, Texas, Florida, New York, Illinois and Washington, D.C. OSC ran employee directed

advertisements in these states, as well. The same "spots" were also distributed nationwide as public service announcements.

Efforts to Reform Employer Verification to Minimize Discrimination

Notwithstanding the aggressive enforcement efforts and outreach activities to date, the problem of immigration-related unfair employment practices continues. The tide of anti-immigrant sentiment that has swept across the country over the last few years compounds our enforcement efforts. Such sentiments fan the flames of xenophobia and prejudice that leads to the discrimination against U.S. workers who look or sound "foreign." Moreover, the close attention to immigration issues engendered by such sentiments heightens employers' sensitivities to, and concerns over, potential liability for the employment of undocumented workers. The cases we have handled demonstrate that in attempting to conscientiously comply with the law and hire only work authorized individuals, many well meaning employers often find themselves stumbling over the intricacies of the employment verification process and running afoul of the IRCA antidiscrimination provisions.

While OSC cannot say how extensive a problem it is, our experience indicates that the charges we do receive are but a small sample of the number of such incidents actually occurring. I would note, for instance, a telephone poll conducted in the

Baltimore/Washington Metropolitan area last year reported findings that indicate that the incidence of discrimination has become worse than that found by the Government Accounting Office ("GAO") in 1990. For example, 39% of local hiring officers indicated that employer sanctions deter them from hiring foreign-born workers. Twenty three percent said they do not offer jobs to people they perceive to be undocumented, yet their perception is not based on information obtained through the I-9 process. Finally, 67% of the employers surveyed stated they require workers to complete the I-9 prior to actually hiring them.

Moreover, as far as the Department is concerned, any form of illegal discrimination is unacceptable and will be aggressively pursued. Nonetheless, we recognize that enforcement and outreach are only part of the answer, and that there is a need to explore other options that can effectively meet the legitimate concerns of controlling illegal immigration into the country, while minimizing actual or potential discrimination against U.S. authorized workers.

IRCA charged the GAO with making three yearly assessments of the effects of the law and specifically focusing on whether the employer sanctions provisions of the law caused widespread discrimination in employment. By the end of the three-year period, GAO concluded that employer sanctions had resulted in a widespread pattern of discrimination. Further, GAO found that the situation was worsening, in spite of the educational efforts that had been undertaken up to that date.

This finding triggered the creation of a task force to review GAO's findings and to make recommendations for deterring or remedying the discrimination. Accordingly, the Task Force on IRCA Related Discrimination, comprised of representatives from DOJ, the EEOC, U.S. Commission on Civil Rights, and others, was created. In September 1990, the task force issued its report and recommendations for eradicating the discrimination identified by GAO.

The task force recommended enhancement of the OSC's enforcement activities by the establishment of field offices and by strengthening the provisions of 1324b. It also recommended increasing public outreach activities. Finally, the task force recommended simplifying the work authorization verification process.

Although budget restrictions have not permitted the opening of regional offices, OSC has taken a number of steps to increase our regional presence. The recommendation to strengthen the antidiscrimination provisions was accomplished with the passage of IA90, which enacted most of the statutory changes recommended by the task force. OSC has also taken several actions since the recommendations to enhance public education.

The improvement of the employment verification process, however, is a task that still needs to be accomplished, and one which is key with regard to minimizing the discrimination problems that I have mentioned. As I indicated earlier, one of the major factors underlying employer discrimination still is

confusion as to what is, and is not, acceptable documentation. Notably, the forthcoming recommendations of the IA90 mandated Commission on Immigration Reform, include a call for the "development and implementation of a simpler, more fraud-resistant system for verifying authorization to work."

Efforts by the INS to effectuate the recommendation to improve the work authorization verification process are underway. On March 20, 1995, the I-151 permanent resident alien registration cards ("green cards") issued prior to 1979 will no longer be valid and will be replaced with the current Alien Registration Receipt Card, Form I-551. This will remove from circulation obsolete or fraudulent versions of the card. INS has also begun the process of reducing the number of documents which are acceptable for employment verification purposes. The proposed rules, published on November 23, 1993, would remove sixteen of the twenty-nine currently acceptable documents. These actions will help in reducing employer confusion over the work authorization verification process.

As I stated in the beginning, there are no easy answers. Employers' lack of understanding about IRCA's requirements and its discriminatory consequences compel the conclusion that there is a need to improve the Form I-9 verification process by reducing the number of documents used to establish work eligibility. The measures that are taken to achieve that, however, require a critical and considerate balancing of concerns to ensure that in the process of attempting to fix the weaknesses

in the employment verification system, we do not wind up aggravating rather than resolving the current situation of discriminatory practices.

Finally, we are generally aware of some other recent proposals and suggestions to address the problems and weaknesses in the employer verification system. If implemented, these proposals could impact our program, and we will follow with interest the policy developed, if any, as a result of these proposals.

Thank you.

Mr. BECERRA. Thank you for your testimony.

I wanted to grant each of you latitude in the time I gave you for your testimony because I think it is very important that we try to come up with some real answers with regard to employer sanctions. Thank you for your indepth testimony.

Mr. Thompson, let me ask, obviously there is the principal issue of how we try to ensure not only the enforcement of employer sanctions, but enforcement in a way that does not impinge on the rights of American citizens. You mentioned cost in having some form of a national ID card. At this stage, I know of no initiative by the administration to come up with a national ID card, that there is this idea of a national registry which the Commission has adopted, not necessarily the administration, and I would like to get into that in a second.

You mentioned between \$3 and \$6 billion in costs to issue and reissue cards that might be more secure, but you said still not counterfeit-proof. What do we get for from \$3 to \$6 billion?

Mr. THOMPSON. Well, I think you have to talk about the system as a whole. By the way, the card itself might cost a buck or two. We are talking \$200 million, so that is not the big bucks. The big dollars are in the time it takes to have all Americans come in with their stack of documents and reestablish their identity, and how long it takes us to take their picture, get their thumbprint or whatever is the identifying element.

The card, as it exists, doesn't have identifying information on it at all, so we will have to come up with a card that has had a thumbprint or photo. The problem with a photo is that you would have to reissue it every 5 years or so. I guess thumbprints last a little bit longer. What you then have is an identity document and a card which has two features that you need to focus on.

One is that it is only as good as the documents brought in to prove who you were in the first place. If you can phony up your birth certificate and bring that in, we will give you a wonderful \$2.50 plastic card with holograms, but it will be the wrong identity. Second, the fancier these get, the more difficult it is for your average employer to have the machinery necessary to decipher them.

A picture is probably fairly easy, but the problem is you have to keep retaking it. If you have digitalized thumbprints, I am not sure the average employer that has five employees will have the equipment necessary to take a card and compare that card to the thumbprint of the person that just came in to make sure that the card is that person.

So you have to think not only in terms of whether you can make the card counterfeit-proof, but also whether it is going to exist in a system which can function in a way that ensures, with a reasonable tolerance, that people who have the card are who they say they are.

Mr. BECERRA. It sounds like you are saying that between \$3 to \$6 billion, the higher the cost, the more we get in terms of security measures, photo ID, fingerprints, perhaps a bar off a strip. What are the costs to the employer to the degree that you can somehow quantify them?

Mr. THOMPSON. Three to \$6 billion is our cost. It doesn't include whatever time you have to spend coming to see us. We don't have

a good estimate on cost to the employer. I think it would very much depend upon the direction the card took. If you just did a picture, probably that employer doesn't have to bear much of an additional cost at all. If you go to magnetic strips, a lot of people in retail trade already have those, but if you get into reading a chip and trying to get a thumbprint, I don't know what the unit costs are but they will be considerable.

I understand the strip machines cost \$100 to \$200 each. Just for you to keep in mind as you discuss the impact on employers, we post earnings each year from approximately 5.8 million employers in the United States. That is how many there are that send us earnings records. Of those, 3.7 million have less than 10 employees. So the great bulk of the business is by very small employers with four or five or six people working for them. There are 3.5 million of them out there each year that report to us.

Mr. BECERRA. Is that document you referred to in your testimony?

Mr. THOMPSON. No.

Mr. BECERRA. You may want to submit that for the record as well.

[The information follows:]

DISTRIBUTION OF TAX YEAR 1992 ERMOMET EMPLOYERS
BY SIZE (NUMBER OF EMPLOYEES)

	ZOW2	<i># of companies</i> FREQUENCY	PERCENT	CUMULATIVE FREQUENCY	CUMULATIVE PERCENT
LESS THAN 10		3695040	66.6	3695040	66.6
10-25		1016940	18.3	4711980	84.9
25-47		405184	7.3	5117164	92.2
50-74		143954	2.6	5261118	94.8
75-99		73806	1.3	5334924	96.1
100-149		75830	1.4	5410754	97.5
150-249		60499	1.1	5471253	98.5
250-499		42247	0.8	5513500	99.3
500-999		20414	0.4	5533914	99.7
1000-1999		9798	0.2	5543712	99.9
2000-3999		4570	0.1	5548282	99.9
4000-9999		2325	0.0	5550607	100.0
10000 AND OVER		1204	0.0	5551811	100.0

Mr. BECERRA. A second question. Have you had a chance to review any of the reports by the Immigration Reform Commission and its proposal for a national registry?

Mr. THOMPSON. I read it over the weekend, so the answer is yes, although I am not quite sure what they are talking about in certain places.

Mr. BECERRA. Focusing on what you know and what you have heard about the proposal for registry and its implication of the Social Security identifier, the number and the card itself, how do you see that working within your operations and what does that do to the Social Security Administration?

Mr. THOMPSON. The exact proposal that the Commission is making is not clear to me. I think they are proposing a strategy. They don't really have a particular proposal. It may not be necessary to actually have a card. You might be able to do this by simply verifying information that an individual supplied you, for instance—

Mr. BECERRA. What you are saying is, the prospective employee gives to the employer information, the data that are required for the employer to check?

Mr. THOMPSON. That is right. You come in and you give to the employer your name, your Social Security number, your mother's maiden name, where you were born and your date of birth. That stuff is in our records, so, in principle, the employer can call, we can say, yes, there is an individual who matches that. What is the probability that you are lying? I don't know the answer to that. But we can go that far.

I think what the Commission was saying was, well, should we try out some kind of a system like that to see if we could make it work and make it work without a card. Let's focus on a couple of obvious shortcomings that have to be dealt with. We could have a hundred people come in with the same valid information. For example, someone could get a "Who's Who in America," unfortunately, for my information. And so we would have to have an audit system in which somehow the fifth time that that same set of information was requested in a period of 2 weeks, a bell would go off and we would say, "Wait a minute, there must be somebody going around peddling incorrect information." You would have to find out whether this could be made to work.

Always before we deal with information over the telephone, we do this; you call us and say, I want to talk about my account. We will ask you certain information to satisfy ourselves that we are talking to whom you claim to be. We want to be sure we don't reveal anything about you to someone we shouldn't. Your interest is that we not tell everybody in town this information.

Now we have a situation where it is the opposite. There may be people who in fact want us to share this information so their friends can get by the verification system. So we would have to see whether this in fact was an effective barrier.

Second, let me remind you that what we have in our files is limited to your work status at the time you got your Social Security number. In recent years, as the attention on fraudulent numbers and cards grew and the concern grew, we changed our procedures so that we will document in our records that somebody got a card and that they are not authorized to work with that card.

That is a recent thing, so people could have gotten a card 20 years ago and we wouldn't have even made the notation. Now, we do. But that doesn't mean that your status hasn't changed in the time since you got your card.

You could come in here as a foreign student attending American University, and you need a Social Security card. Frequently you need a number to open a bank account or register at some universities. We give you the card, and we note that it is not authorized for work. We never change that. You subsequently apply for citizenship or are granted citizenship, and we have never changed our records. So there is a limit as to what our current records contain. Our records are set up to make sure we have the right account number with each individual so we can post the earnings correctly. They are not set up as a data base for all Americans and whether they are authorized to work.

Mr. BECERRA. Let me move to my colleague from Texas for any questions he may have.

Mr. SMITH. Thank you, Mr. Chairman.

Dr. Thompson, I found much of your remarks fascinating and I am intrigued by the idea that you don't have to have a card and you can check on validity of the information and perhaps the eligibility of the individual to work. Even though it has its flaws, it is not foolproof, it seems to me that any check, even if a check without a card being involved would serve as a deterrent and help us enforce the law and eliminate some discrimination along the way. So I think that is something we ought to consider.

To take it a step further, we were talking in terms of a tangible card, and you pointed out accurately that you can't always verify the person and determine it is really who they say they are, even if you have a tamper-proof card. At the same time, recognizing that we are never going to come up with 100 percent foolproof system, particularly in dealing with the Government and the hugeness of it and the number of people, don't you think that having a tamper-proof, verifiable identity card of some sort is probably the best that we can do, or do you have a better solution?

Mr. THOMPSON. I am not quite sure how you want me to answer that. You probably want me to answer yes. I am not sure what the question is that you want me to focus in on.

Concerning the card itself, the Social Security card, I think it is a question of, "Do you want an identity system?" "Do you want to start with a Social Security card?" A lot of people have looked at this and have tended to be drawn to the State driver's license.

Mr. SMITH. You mentioned the problems with the photograph, but as you probably know better than I, I think there are 13 States that have tamper-proof driver's licenses with photographs that are currently updated. So we are talking about a more expansive program than what some States already have.

Mr. THOMPSON. Clearly, it can be done. Many States have the Social Security number on the driver's license and we verify SSN's for State motor vehicle bureaus.

Mr. SMITH. Is there anything better that you can think of other than a tamper-proof identification card that is verifiable that would enable us to take some steps, make some progress toward eliminating discrimination and enforcing the current law?

Mr. THOMPSON. No. I don't want to say there is anything better. I think the question that we have to struggle with and the Congress has to struggle with is the tradeoff, how good is it, how good is it in terms of achieving the objective that we have, and what price are we paying? It is not only the \$3 to \$6 billion, but the cost in terms of losing civil liberties and the hassle factor for Americans to have to queue up and get their picture taken for one more round of cards.

That is what you have to weigh. I don't think I can give you a better solution to identity than some kind of a card like that. I am just asking you how good a solution is that and is it worth the price that we will have to pay for it?

Mr. SMITH. That is a tradeoff maybe the Congress has to make with the help of the administration. With regard to concerns with regard to civil liberties, I don't think that such a card would ask for additional information other than what is already being asked about a number of cards that we have today, whether it be a Visa, whether it be a driver's license or whether it be something else.

Do you agree with that?

Mr. THOMPSON. I am not competent to answer that question. I know there is a lot of concern about civil liberties, and I will defer—

Mr. SMITH. In regard to civil liberties, I think we are all concerned about that. The administration keeps reminding us we live in an information age and we have a superhighway coming in and we all have identification cards. I think we have to realize that this is a modern world and that one more type of card if not abused is not necessarily going to lead to a diminution of our civil liberties.

Mr. Anderson, you said that a work authorization verification process is the key to preventing discrimination. Do you support in theory, then, what the Commission on Immigration Reform recommended as far as their computer verification registry?

Mr. HO-GONZALEZ. Mr. Smith, certainly the Commission is to be commended for having undertaken such a comprehensive—

Mr. SMITH. It sounds like the words you use is what they are talking about.

Mr. HO-GONZALEZ. We believe that there is a need for simplifying the work verification process. That is the key to eliminating discrimination that is occurring with regard to confusion. We do have some concerns with regard to the Commission's proposals. Some are very good. Others we have some concerns with particularly regarding the possibility that they may exacerbate national origin or citizenship status discrimination we have to reserve any comments until we have had a chance to look more closely at those proposals.

Mr. SMITH. My time is up. Let me ask a couple of other questions. The work authorization verification process is still going to involve some type of tamper-proof verifiable identification card or not?

Mr. HO-GONZALEZ. We believe that the system has to be simplified. What exactly that will involve, I don't have any answers.

Mr. SMITH. Do you have any idea the extent of the use of fraudulent documents today in the workplace?

Mr. HO-GONZALEZ. The INS would be the best person to answer that. I don't know.

Mr. SMITH. With regard to the penalties that are imposed on employers, how many fines as far as the number of fines were imposed, say, in the last calendar year? Or give me some reference here. How many penalties were imposed on employers in some frame of—

Mr. HO-GONZALEZ. I can get back to you on how many employers. I can tell you that the amount this past fiscal year was approximately \$170,000.

Mr. SMITH. That doesn't strike me as being very much or much of a deterrent when you consider how much many employers make and how large the payroll may be. My question: If that is all the penalties that have been imposed, I would have to agree that the program is not working. I think there needs to be better enforcement.

Mr. HO-GONZALEZ. Mr. Smith, that is well taken. We do aggressively pursue enforcement action but recognize that there is a need to take more proactive enforcement measures.

Mr. SMITH. Do you need more personnel? What is the problem?

Mr. HO-GONZALEZ. The Department of Justice just submitted an appropriations request detailing what it saw as the needs of our Office needed in terms of resources.

Mr. SMITH. You requested an increase in your budget for enforcement—

Mr. HO-GONZALEZ. It called for enhancement of the budget for outreach and enforcement purposes.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. BECERRA. The gentleman from Florida, Mr. Canady.

Mr. CANADY. No questions.

Mr. BECERRA. Let me take a few more minutes. The gentleman from Texas may have more questions also. In terms of the Office, I think Mr. Smith was asking some very relevant questions.

Let me ask you, what is the size of your budget right now?

Mr. HO-GONZALEZ. Mr. Becerra, the budget right now is approximately \$4.2 million.

Mr. BECERRA. How many investigators can you hire with that budget?

Mr. HO-GONZALEZ. Right now, we have 3 investigators, 1 for each regional team of attorneys, and we have a total of 14 attorneys excluding myself.

Mr. BECERRA. So 14 attorneys and 3 investigators?

Mr. HO-GONZALEZ. That is correct.

Mr. BECERRA. The three investigators are the individuals that would cover any claim of employer sanction or investigate or do any preemptive action on an employer in violation of the sanctions law throughout the Nation?

Mr. HO-GONZALEZ. The investigators usually are the ones who will go out. However, because clearly three investigators are not enough, the attorneys will also go out. A couple of years ago, we only had one investigator, so the attorneys served as investigators. Now we have two more so we have a total of three.

Mr. BECERRA. That includes the 2 new investigators giving you a total of 3 to cover the country, and 14 attorneys, those also working at times as investigators?

Mr. HO-GONZALEZ. That is correct.

Mr. BECERRA. Which obviously takes them away from their duties as attorneys litigating some of these simpler sanction violations.

Mr. HO-GONZALEZ. True. Unless we are involved in serious litigation, though, that has not been a problem.

Mr. BECERRA. OK. Dr. Thompson, let me return to you for a few questions with regard to the data base that SSA has. You did mention that it was never meant to be a verifier of information as a source for universal identification. I know you all do a great job at the Administration and it is the largest data base in the world?

Mr. THOMPSON. We think we are running one of the largest computer centers in the world and trying to maintain it, yes.

Mr. BECERRA. Given what you have, give me your best assessments of the veracity of your data base as an identifier of personal information.

Mr. THOMPSON. The data base will be very good for anybody who got a card in the last 15, 18 years. It is pretty good for everybody else. Now, what happens is that there will be some folks who, back in the 1950's perhaps, ended up getting more than one number. We could have duplicate numbers. The controls to make sure that every number was issued just once and the cross-checks were not tightened up until the 1970's because the technology to do it wasn't there until you got into computers and the ability to communicate across the country.

Originally, we simply had to have a bank of numbers at each field office and we would pass them out. If you forgot your number and went to a different field office or forgot that you had one, you could end up with two numbers. You could forget what your place of birth was, I suppose, or get it confused with the town your parents lived in when you were born. With that kind of information, since we were not verifying it, there is room for errors. I suppose there were people who didn't give their exact birth date, too.

We don't know to what extent that is a problem. We clean it up when people come in to file for benefits. We are shortly going to begin a program of issuing personal earnings and benefit statements to all Americans over the age of 25 in which we will tell you what we have in our files and invite you to correct it if you see an obvious mistake, so over time that will get better.

Mr. BECERRA. Focusing on the issue of the national registry, first we have to make sure, this would be a registry there, not just for immigrants seeking employment, but for anyone in the country seeking employment?

Mr. THOMPSON. Let me emphasize that the Achilles heel of this is that there are really two data bases. We have a data base which covers everybody with a Social Security number and tells us where you were born. There is information on work status as of the time you filed for a number, so that takes care of citizens who are citizens by birth.

We make no pretense of updating that to show your current work authorization or whether you became a naturalized citizen. That

information is in the INS in their data bases. So if you want to know where a person was born, if that is the verification, then in principle our data base can handle that. But if you want to know whether an alien is currently authorized to work, we don't have that information.

Mr. BECERRA. Can your data base, in computer lingo, speak with the data base that the INS has?

Mr. THOMPSON. I think you need to talk to INS. They admit that their data base needs cleaning up and that there are delays in getting people's status updated. I am not sure that they do speak to each other. We would have to speak on the basis of Social Security numbers. I don't know the extent to which their data base has everyone's Social Security number in it.

Mr. BECERRA. Have you ever experienced an opportunity to have or share your information with the INS?

Mr. THOMPSON. We have never done a two-way thing. We give them information. But having given it to them, we don't follow up.

Mr. BECERRA. You are talking done manually?

Mr. THOMPSON. No, it is automated. Regarding one of these records involving somebody who is supposed to be not authorized to work, if earnings show up on the number, we will post the earnings and alert the INS once a year what the list of numbers is. In principle, they could say those people are authorized to work, no problem.

Mr. BECERRA. So there has to be some human intervention to provide data from your data base over to the INS—

Mr. THOMPSON. I think there has to be human intervention for the INS to use the data that we supply. We have never gotten data from them that we have been able to merge in or that we have merged in.

Mr. BECERRA. The identifier, you mentioned that ultimately you have to have some identifier to show that the information you are providing, whether it is to the Social Security Administration or to a prospective employer, is really your information. So if I go to you as a prospective employee and I tell you my age, date of birth, my name, my Social Security number and whatever other information might be required, you either have to take me at my word or somehow have me prove to you that what I gave you as information relates to me as a person?

Mr. THOMPSON. That is right.

Mr. BECERRA. Given that, any registry program that relies on information being sent over to some data bank for confirmation without the employer necessarily becoming the possessor of personal data of this prospective employee ultimately relies on the employer saying, I believe that the information you are giving me is about you and I am just checking it, or the employer must somehow verify that the person giving the information is actually the person who is the owner of that information.

Mr. THOMPSON. I agree with that statement. The Commission seemed to suggest that maybe we ought to try to see if we have in our files enough information that nobody but you would know. Whether that principle would be one which you could then base—that principle plus audit—

Mr. BECERRA. As soon as you use that registry system, that information that nobody but you knows would no longer be true or that statement would no longer be true because you would have to share that with the employer in order to gain employment. So the information which no one but you as a prospective employee knows is now something that nobody but you and your employer knows and who knows with whom the prospective may share that. It no longer becomes confidential information at that stage.

Mr. THOMPSON. Yes. We don't have all that much information.

Mr. BECERRA. Dr. Anderson—our colleague from Texas just came into the room and I would like to give him an opportunity to ask some questions. The whole issue of trying to curtail the number of people who take a job in this country without the authorization to do so, there are a number of different things that have been proposed to try to address that issue.

Any thoughts on your part as a representative from the Department of Labor on the whole issue of trying to enforce our current labor laws and labor standards, occupational health and safety standards, so as to incentivize, to entice citizens and lawfully permitted immigrants to take jobs that right now they are not interested in because either the wages for those jobs are too low or the conditions under which they would work are too demeaning and they are not interested in taking those jobs?

And is there any thought on your part or on the Department's part on the issue of trying to enforce our current labor laws and our labor law standards to make sure that we could try to encourage those eligible to work to take some of these jobs?

Mr. ANDERSON. Yes, Mr. Chairman. It is our view that vigorous enforcement of labor standards should create a level playing field, should reduce the incentive to employers to gain an advantage by hiring those who are going to be vulnerable, who are going to be exploitable in the way that is very evident in some industries. So we believe, by enforcing the labor standards, we can make a contribution to reduce the incentive for illegal migration.

In that sense, we have a strategy now that was introduced last year to focus very heavily our enforcement resources on low-wage industries, to try to focus in on the garment industry, agriculture, the service sector, where there is reason to believe there is a disproportionate number of undocumented workers in order to try to see that employers in those industries meet the labor standards. That is our view of the matter.

Mr. BECERRA. The gentleman from Florida for any followup questions.

Mr. CANADY. No, thank you.

Mr. BECERRA. The gentleman from Texas, Mr. Bryant.

Mr. BRYANT. I had to leave for a period of time and I am afraid you have already asked the good questions.

Dr. Thompson, it seems obvious we can't do anything about enforcing employer sanctions without some kind of a counterfeit-proof system and you indicate that the situation is quite complicated with regard to Social Security cards. What would it cost us to—let me ask another question first.

Do you have a recommendation for us as to how to do this?

Mr. THOMPSON. No. We are evaluating the options. Basically it is not my job in the Social Security Administration to tell you how to erect a system. I could advise you on the pros and cons of using our mechanism, a Social Security card.

Mr. BRYANT. How much would it cost to do——

Mr. THOMPSON. We have estimated anywhere from \$3 to \$6 billion to reissue cards to all Americans. I caution you that the card itself, if we give a brandnew card with a computer chip in it, or a magnetic strip or picture, might run \$2 a copy. The real expense involved here is the expense associated with having 200 million Americans come in to wherever—I hesitate to say our field offices because we couldn't do this in a period of 2 years—but to have 200 million Americans show up and prove again who they are and have their picture taken or their thumbprint or whatever else.

When we price this out, if we can do at 10 minutes per person everything that it takes for the interview and to produce the card, \$2 for the card, it comes out to \$3 billion. If it takes 20 minutes, it comes out to \$6 billion. That is what distinguishes the \$3 billion and \$6 billion estimates. We have not done any systematic pricing of whether there would be an additional cost for employers.

Once you have produced this card, it is no better than the documents you relied upon to decide this individual was who they said they were, and there is a serious problem with the lack of statistic records in this country. That is a different topic. You need to recognize going in that you are going to have a card which may be tamper-proof, but it won't be perfect. People will have valid cards and phony ID's because they have gotten what we call breeder documents which allow them to do that. Then you have this card and it is tamper-proof—I hesitate to say that we can produce something that nobody could counterfeit.

You have to figure the price on the street of a counterfeit card. If it is \$50, the question is: Can somebody for \$49 counterfeit one? Even the sophisticated stuff I think can be counterfeited. Let's say that we can come as close as possible to having a not counterfeitable system. If it works off pictures, not only do we do \$6 billion worth to get the thing the first time, but you have to come back every 4 or 5 years because your appearance changes.

The advantage of the pictures is that the employer can probably look at the picture and that is the end of it. The picture either agrees or it doesn't agree. If you go to more sophisticated stuff, digitalized fingerprints or something with your retina, the employer will have to have a machine that reads the card and then I guess looks at your retina. You have got to compare your retina with your card to see whether the card is in fact you. So there is an expense which is going to be incurred by the employers in verifying that this is a valid card. That is going to depend upon what system you use to make it counterfeit-proof.

Mr. BRYANT. What was the value of the pilot program that was run in Texas?

Mr. THOMPSON. People called us and said I have before me someone who alleges to be John Doe who has a Social Security number of nine digits. I think we asked for the birth date and the gender. We would say, yes, there exists in fact in our records a John Doe with that Social Security number, that birth date and that gender.

Whether in fact that was John Doe standing in front of them we never knew. We just verified that the alleged Social Security information matched information in our records. We have said we have done this thing but we are not sure what we have achieved.

Mr. BRYANT. Help me through this. If they had a counterfeit Social Security card, presumably they got the name of John Doe who was a live person somewhere and counterfeited it.

How did they get the counterfeit Social Security card through the system?

Mr. THOMPSON. I assume if you got it on the streets of Tijuana, it probably is a name and number which don't match in our records. So when that person came in and the employer called, we would say it doesn't match. To that degree, if it is a totally counterfeit card, it is probably a counterfeit identity. Even if you had a counterfeit card of a real person, you would have to know a little bit about him other than what is on the face of the card.

If you found a stolen wallet and took a real card out of it, you would have a name and number but you wouldn't have the rest of the information. So we catch you there. It is a real card but it is not yours.

Mr. BRYANT. Why wouldn't that work?

Mr. THOMPSON. It does, but we still don't know whether it is you. You got a real card out of a trash bin because somebody stole somebody's wallet and the card says John Doe, but you are not John Doe.

Mr. BRYANT. So the guy gets by because he has counterfeit identification documents?

Mr. THOMPSON. For the system to work that there has to be another document that says, this is John Doe and it has a picture on it or something. The employer can rely on that. The card can be a valid card but doesn't have to be a valid card for the person who is walking around with it.

Mr. BRYANT. Thank you.

Mr. BECERRA. We are going to let you go, but you raised too many questions. Let me make sure it is clear because this is compelling testimony in many ways.

Mr. Thompson, let me see if I can get something clear. First, in order to verify information, there has to be some way to verify that the person giving the information is the owner of the information being provided?

Mr. THOMPSON. That is right.

Mr. BECERRA. So whether we have a registry system or not, and whether we call it a national ID card system or not, ultimately an employer that is required to verify information or required to make sure that this person is eligible to work through a process of verification has to somehow be able to match the information provided and to be checked with the person giving it?

Mr. THOMPSON. That is right.

Mr. BECERRA. So if it is based on name, gender, age, those types of identifiers, somehow Employer Smith has to know that prospective Employee Jones is really Employee Jones born on this date with this card number, correct?

Mr. THOMPSON. That is right.

Mr. BECERRA. And there is no way, short of some identifying cards or identifying documents, that that prospective employee may hold so that Employer Smith knows that Employee Jones really is the possessor and owner of information employed?

Mr. THOMPSON. Maybe you could try asking enough questions that only Jones would know. If Jones told all eight of his cousins that had just come from Ireland and they all tried to do the same thing, eight Joneses would appear as requesting verification and our computers would go "tilt" because they would be programmed so that the third time we were asked, they would flag it.

Mr. BECERRA. In terms of what you can do at the Social Security Administration, you will need—regardless of whether or not we issue a card and spend \$3 billion or \$6 billion, you will need to update periodically because of physical changes of the person or name change or maybe some unintended error first provided by the individual.

So there will be a need to update periodically?

Mr. THOMPSON. They lose the cards also.

Mr. BECERRA. Ultimately, whether you do the interviews at our office or somewhere else, the person at the Social Security Administration who collects this information will rely on documents for the veracity of the person giving the information, so it could be a birth certificate that the applicant brings or other identifiers, but ultimately someone will have to decide if the information being provided on these documents is valid, is not counterfeit, and really does belong to the person sitting before him or her?

Mr. THOMPSON. That is right.

Mr. BECERRA. Does the Social Security Administration within the calculation of \$3 to \$6 billion in costs factor in any type of costs to train its employees to verify birth certificates or other documents or to be capable of determining whether the underlying documents being used by this applicant for a Social Security card, that these documents are valid?

Mr. THOMPSON. Yes. We do that now. We issue 6 million cards a year to people, and half of those are in hospitals at birth and half in field offices. They come in, and if you go to many of our field offices, there is a long line of folks and half need a replacement card for some reason.

And then we have a process in which you have to show us some sort of photo ID and tell us enough information so that we are convinced that you are who you say you are. Or they come in for a new one and a lot of them are foreign-born coming with some collection of passports in foreign languages, birth certificates in foreign languages, immigration cards of some sort. Our service representatives are trained to know which ones are valid and which ones aren't.

They are the ones that can spot a phony Social Security card or a phony INS document much more easily than an employer can.

Mr. BECERRA. What about a phony birth certificate?

Mr. THOMPSON. If we suspect there is a phony certificate, we will hold onto the information and tell them that they have a problem, and that we are going to look into it.

Mr. BECERRA. That would take you more than 10 minutes?

Mr. THOMPSON. Yes. Over the course of a year, several hundred of these cases will be referred to the IG where we think it is a phony birth certificate.

Mr. BECERRA. So the 10 minute or 20 minutes check is really based on being able to really shepherd these folks through very quickly, be provided documents that seem fairly authentic, to be able to process through at a cost of between \$3 to \$6 billion.

Mr. THOMPSON. Yes.

Mr. BECERRA. I see that our chairman has arrived, so I will abdicate my responsibility.

Mr. MAZZOLI. I have no questions. I appreciate what my friends have done who agreed to sit in for me today because we have the dedication at the National Institutes of Health for Congressman Natcher. I want to thank them publicly for this and thank the panel as always for helping us.

We have an interesting confluence here in the sense of activities on the Hill dealing with worker verification, dealing with national health insurance programs as the President talked about with his card, and we have now Professor Jordan, our former colleague here, Barbara Jordan's panel coming with an idea of having a data base into which people can inquire in a quick way where they can avoid the discriminatory activities in the workplace which occur today.

And so I think we have something coming together here which could yield a better form of employer sanction for those people who feel employer sanctions is one element of a fairly broad-based series of steps to take to make sure that people work who could work and don't work who shouldn't work. So I think it comes at a time—and because this data base depends upon technology and depends upon accurate information, that is where of course the Social Security Administration comes in for sure.

So we will probably not be able to get to the bottom of this whole thing today and maybe not for some days or months ahead, but it is something that we will be continuing to move forward again, particularly because of what Chairman Jordan has done with her committee. So thank you.

Thank you, Mr. Chairman.

Mr. BECERRA. Mr. Chairman, are you going to stay?

Mr. MAZZOLI. Yes.

Mr. BECERRA. I will relinquish the Chair, then.

Mr. MAZZOLI [presiding]. Mr. Daryl Buffenstein, president-elect, American Immigration Lawyers Association; Austin Fragomen, chairman of the board, American Council Of International Personnel; Patricia McDermott, manager, corporate immigration department, Digital Equipment Corp.; Mr. Dan Stein, executive director, Federation for American Emigration Reform; and Prof. Katherine Vaughns, professor of law, University of Maryland.

Thank you all very much for coming today. Your statement will be made a part of the record, and I guess for simplicity sake, we will call in the way—I was going to say they appear alphabetically and they appear that way.

Mr. Buffenstein.

**STATEMENT OF DARYL BUFFENSTEIN, PRESIDENT-ELECT,
AMERICAN IMMIGRATION LAWYERS ASSOCIATION**

Mr. BUFFENSTEIN. Thank you, Mr. Chairman. We do have—we are pleased to be here and we have a comprehensive statement on record.

I would like to take a few moments to summarize our concerns and observations about the weaknesses in the employment verification system. Before I do that, Mr. Chairman, I must, if it is not improper, take a second to lament the void that your retirement from this committee leaves in the immigration debate.

Your years and years of experience with this issue is not surpassed by anyone and you are leaving at a time—as Mr. Becerra mentioned earlier, this is an interesting time with a lot of unfortunate sentiment on the subject of immigration, and we will miss your contribution to this debate. I hope it will not stop simply because you are not going to be chairman of this committee or involved in this particular Congress.

Mr. MAZZOLI. Thank you. I do hope to stay active and involved in my upcoming so-called retirement. It is retirement in name only I guess.

Mr. BUFFENSTEIN. Mr. Chairman, with some 4,000 members representing scores of employers of all sizes in all industries across this country, we think we have some insight into the weaknesses of the current employer sanctions and verification system, and our collective experience shows us that the system is absolutely malfunctioning; it is not working.

The problems are intrinsic to the system itself to some extent and, to another extent, there are problems in the implementation of the system. Employers are caught impossibly between the requirements of the sanctions and verification system and rules on the one hand and the discrimination rules on the other. They almost have to violate one set of precepts frequently in order to comply with the other.

If I can take a minute to give you a new example of how Kafkaesque that conundrum can be. A conditional residence card is a temporary green card that has a 2-year expiration. Recently an employer in Los Angeles was faced with the presentation of such a card by an applicant for employment. The employer looked at it and was confused. It was a green card but it had an expiration date. Could they or could they not accept it?

They consulted the INS I-9 instruction booklet. The booklet said that any time a document has an expiration date, the employer must reverify. The employer looked at the card and it had already expired so they thought they could not hire this person. They checked with an attorney. It happened to be one of our members. The attorney said hang on, there may be a discrimination issue here.

The employer said this is impossible. The I-9 booklet said that we should reverify if the document has an expiration. So the employer check with the district office of the Immigration Service in Los Angeles. The office said, yes, you cannot hire this employee. The card has expired and the employee is not authorized for employment.

Unbeknownst to the district office, INS headquarters had just issued an opinion—an unofficial opinion—on a letter which basically said that in such a circumstance, there is no need to reverify. Well, the Special Counsel's Office takes the view that when there is no need to reverify, if you do reverify, you are discriminating, you are abusing documents. So that is a classic example of how the employer is caught between the two rules and there isn't enough coordination between the various agencies.

In another case, just last month, an employer was uncertain about a document, checked with the INS, the INS said the person is definitely not authorized to be employed. The employer refused to hire the employee. A discrimination charge was brought by the OSC. The employer eventually settled the discrimination charge, paid a fine, and as part of a settlement with the OSC, promised never to contact the INS again about employment verification.

Mr. Chairman, the purpose of these examples is not to necessarily heap criticism on the INS or the OSC, which are agencies trying to do their job, but to point out the intrinsic problems and intrinsic weaknesses of the current system. These are regular decisions. They might seem like somewhat strident examples. They are regular decisions that happen in the workplace virtually on a daily basis especially with employers that hire a lot of employees and have a lot of turnover of workers.

There is another major weakness in the current system. Government enforcement is heavily skewed towards minor technical infractions of paperwork requirements often that involve absolutely no illegal employment or employment of unauthorized workers.

Our members across the country report fines in thousands and hundreds of thousands of dollars for minor technical infractions such as not putting the date on the right place on the form, maybe not dating the form, which incidentally, if you look at the I-9 form, the little box for the date is so far from the place of the signature that, frankly, it would take a lawyer to scrutinize it and tell you where to sign it. And even technical violations for not having the right number of the document on the form, even though a copy of, for example, the Social Security card is attached and the number of the Social Security card is very clear on that copy. The mere fact of not having that number on the form is subject to fines. These fines, as I say, in terms of thousands and hundreds of thousands of dollars.

One of our members in Colorado called me just last week with a case involving an employer that has a gross annual income of half a million dollars, and 50 employees, none of them unauthorized. They had a fine noticed on them of \$250,000, half their gross annual income for pure paperwork violations, not involving any substantive violation at all of the employer sanctions laws.

The vast majority of employers, we are absolutely convinced, our experience teaches us, are anxious to comply with the law, even at somewhat extraordinary expense. But the intrinsic tension between the discrimination rules on the one hand, the sanctions rules on the other hand, the lack of coordination between the agencies—I was heartened to hear of some of the coordination that witnesses talked about today, but, frankly, it is not enough. The misdirected enforcement of INS makes it an impossible situation for employers.

Now, these burdens, the expense, the confusion, they may arguably be justifiable if in fact we are getting a result of stopping immigration to this country, but it has been widely accepted that illegal immigration is continuing unabated and, as you all know, the GAO has indicated that discrimination too has not been decreased, or at least as increased.

What is the answer?

Mr. Chairman, we see no quick fix, no panaceas; indeed, we don't think there are any single solutions to this problem. There must be a number of very carefully coordinated efforts, a number of policies which are directed toward trying to solve this absolutely huge and enormous issue. We don't think that repealing Federal preemption, that allowing the States to enact separate employer sanctions legislation would help; in fact, we think that having another 50 enforcement agencies would confuse the situation even further.

Similarly, we share the INS' concern about a private right of action which would, we believe, open employers to harassment in almost every situation.

The Commission's report does have aspects that merit very serious attention, and we share some of their objectives and some of their concerns. We have very grave concern, however, with the Social Security verification system that the Commission recommends.

We urge your very careful scrutiny of the implications of this system and the most thorough analysis possible of the costs and the benefits of that system. As we have heard today, the INS and Social Security data bases are woefully inaccurate, especially with respect to the—to a specific determination of who or who is not authorized to be employed in this country.

One of the things that Dr. Lawrence didn't specifically—Dr. Thompson didn't specifically mention, but which I believe is true, is that 60 percent of Social Security cards in issuance today were issued before there was ever an inquiry into the authorization to be employed of the individual. So we know that at least 60 percent of the data base does not have any reference to authorization to be employed.

Now, the expense that we are talking about, I would respectfully submit, is absolutely astounding: \$6 billion, and you have to look at the opportunity cost of what else could you be doing with the \$6 billion. There is a lot of preventive border enforcement, a lot of agency coordination, a lot of enforcement of labor standards that could be done for \$6 billion. So we urge very careful study of those issues.

If a pilot program is put into effect, Mr. Chairman, we would urge, notwithstanding the Commission's view that Congress or that the President could implement a pilot program without Congress, we would urge your very careful oversight of any pilot program so that it is limited in scope, in access, and in application, that it protects privacy and provides safeguards against discrimination.

Furthermore, we are concerned about the size of the pilot program. Doing the pilot program in five States with 90 million people really begins to look not so much like a pilot program, but a preliminary implementation of a system that thus far has not been scrutinized with sufficient particularity.

What do we recommend?

Well, while we are studying other options, while we are looking at the Commission's recommendations and considering them, there are some immediate actions that could be taken that would help. We do agree with the Commission that preventive border enforcement operation, Hold The Line in El Paso which has been very successful, should be expanded. We do agree with the Commission that there should be coordination with sending countries. We believe in much, much more coordination between the agencies, particularly on the issue of labor standards enforcement; and most particularly, we believe that INS enforcement should be redirected away from nonmaterial paperwork infractions and toward knowing violations.

Frankly, Mr. Chairman, the INS has not been able to do that itself over 8 years of operation with this program. We would ask that this committee exercise some oversight or perhaps even a legislative mandate to require the INS to redirect that enforcement. Thank you very much.

Mr. MAZZOLI. Thank you very much, sir. We appreciate that testimony.

[The prepared statement of Mr. Buffenstein follows:]

AMERICAN IMMIGRATION LAWYERS ASSOCIATION
AN AFFILIATED ORGANIZATION OF THE AMERICAN BAR ASSOCIATION

STATEMENT OF THE

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

TO THE

SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

ON

THE WEAKNESSES IN THE EMPLOYMENT ELIGIBILITY

VERIFICATION SYSTEM

October 3, 1994

Mr. Chairman and distinguished Members of the Subcommittee:

The American Immigration Lawyers Association (AILA) commends the members of the Subcommittee for this timely initiative in examining the weaknesses of the current system of employment eligibility verification as created by the Immigration Reform and Control Act of 1986. Across the country, AILA members advise and represent thousands of U.S. employers, across a wide spectrum of industries and employment sectors, attempting to comply with the requirements of this law. As a result of this collective experience, we have become well aware of the current system's weaknesses and the resulting burden on employers and hardship to some American workers. In this statement, we detail the apparent weaknesses in the current system, make observations and recommendations in connection with the anticipated report of the U.S. Commission on Immigration Reform, and make recommendations for immediate action while the Commission's report is being examined, as well as comments on H.R. 3362, the "Employer Sanctions Improvement Act."

WEAKNESSES IN THE CURRENT EMPLOYER SANCTIONS SYSTEM

The Immigration Reform and Control Act of 1986 attempted to deter and reduce illegal immigration by establishing the employer sanctions system, which provides for penalties against employers who knowingly hire individuals not authorized for employment or who fail to comply with paperwork requirements that record verification of employment authorization. The employer sanctions system is based on the conclusion that the principal magnet for undocumented immigration is jobs in the United States, and that if undocumented immigrants are denied employment, it will sharply reduce the incentive to enter or remain in the United States without authorization. Aware that mandating employer focus on immigration status at the time of hire could result in employment discrimination against Americans and other authorized workers who "look or sound foreign," Congress included provisions to protect against such discrimination.

Sadly, years of experience with the employer sanctions system has not borne out the expectations of its proponents. The verification process remains confusing and expensive for many employers, the General Accounting Office has reported that employer sanctions have resulted in discrimination, and, most importantly, employer sanctions have failed to deter or reduce illegal immigration to the United States.

The balance between the system's verification requirements and its discrimination provisions, while delicate enough in legal theory, has become a practical nightmare in the workplace, making compliance with each of these precepts difficult. It is our experience that the overwhelming majority of employers are anxious to comply with the law, even at significant expense. They are, however, placed in an impossible situation. As a result of

inconsistent and confused government regulations, policies or pronouncements, compliance with one of these precepts sometimes inevitably means violation of the other. In addition, progress towards a smaller group of documents has been extremely slow, and employers are still faced with a confusing array of different documents which exacerbates the above problem. Finally, and perhaps most disconcertingly, enforcement efforts appear to have been skewed heavily towards minor technical infractions of paperwork requirements, usually involving no alien employment.

1. **Employers are squeezed between the specific requirements of the sanctions/verification program and the prohibitions of the citizenship discrimination rules.** The tension between sanctions/verification and antidiscrimination requirements has developed into one of the greater weaknesses in the IRCA system. A leading source of the problem is the "document abuse" rule added by the 1990 Act. That rule states that an employer's refusal to accept a document that is on the list of acceptable documents, appears genuine on its face and reasonably appears to relate to the person offering it, is an act of discrimination, subjecting the employer to fines and back pay. At the same time, sanctions and verification regulations subject employers to sometimes significant fines if they hire someone they should have known was undocumented, if they accept documents that are not acceptable, or if they fail to reverify expired work authorization documents.

A case reported by one of our members illustrates the problems this tension creates. An employee offered an alien registration receipt card marked "conditional resident." This is an acceptable document to prove both identity and work authorization, but it carries a two-year expiration date. The I-9 instruction booklet currently in use states that employers must reverify expiring employment authorization documents. The employer attempted to reverify, and was advised by the employee that she had been unable to extend her card and, therefore, lost her status. For this reason, it appeared to the employer that she was no longer authorized to work, and that it must dismiss her or be subject to sanctions for knowingly employing an unauthorized worker.

However, the employee's attorney advised the employer that it was barred by the discrimination laws from reverifying an alien registration receipt card. Because this advice was inconsistent with the I-9 instruction booklet, the employer called the local district office of the INS, which confirmed that the employer must reverify the expiring card. However, what the INS district office apparently did not know was that INS Headquarters had issued an opinion stating that alien registration receipt cards, including conditional resident cards with two-year expiration dates, need not be reverified. Further, the Office of Special Counsel (OSC) had issued an opinion letter stating that it is an act of discrimination to reverify any document that the INS says does not need to be reverified. This means that any attempt to reverify an expiring conditional residence or other permanent residence card

would be an act of discrimination. Thus, by following the I-9 instruction booklet (and the advice of the INS district office), this employer was subjected to a discrimination charge. At the same time, if it rehired the employee, it could be committing a sanctions violation.

Another related illustration of the conflict between the two elements of IRCA is an opinion letter recently issued by the OSC, in which the Special Counsel takes the position that, for purposes of the document abuse provisions, it does not matter whether or not the employee is in a protected class. Thus, in the above case, the employee could maintain a discrimination action even though an argument could be made that she is not authorized to work. In a more typical scenario, an employee might present an unrestricted social security card and a driver's license. However, the employer knows that the employee is in H-1B status (which allows the person to work only for the employer designated by INS) but is not certain which employer is designated under the H-1B. If the employer does not request an INS form showing authorization to work for that particular employer, it runs the danger of being accused of knowingly employing an unauthorized worker. At the same time, if the employer requests the document, it is in danger of being charged with discrimination for having asked for additional documents.

In yet another case this year, the employer was confused about the status of a job applicant and checked with INS. The agency mistakenly instructed the employer that the employee was not authorized and thus could not be hired. The employer refused to hire the applicant and was charged with discrimination by the OSC. In a settlement with the OSC, the employer had to pay a fine and was required to agree never to contact INS.

Employers in these situations must decide which provision to violate, knowing that they could be subject to penalties no matter which choice they make.

2. INS emphasis on penalizing paperwork violations undermines credibility of the employer sanctions system. Prior to 1986, the federal government did not have the authority to penalize employers who knowingly hired undocumented workers to gain an economic advantage. From our collective experience with thousands of employers, however, INS appears to have adopted a strategy that emphasizes detection and prosecution of employers for paperwork mistakes in the verification process, regardless of whether undocumented workers had been hired. As reported by many of our members, most investigations and prosecutions by the federal government have been for paperwork violations where there has been no accusation of a knowing hire of undocumented workers. Fines in the thousands, even hundreds of thousands, of dollars have been issued for such "violations" as failing to date the employer's section of the form, failing to have the employee date his or her section of the form, or failing to write the number of the document proffered on the front of the form (even if a copy of the document clearly showing its

number is attached). In a recent Colorado case, for example, INS sought to subject an employer with annual revenues of \$500,000 and 50 employees (all of them in legal status) to a fine of approximately \$250,000 for such technical violations.

AILA believes that a more productive strategy would be to target investigation and prosecution at employers suspected of knowingly hiring undocumented workers, especially where other labor law violations are present. To continue to emphasize detection of paperwork violations in a system based on flawed verification requirements, cannot be justified.

Emphasizing enforcement of knowing hires, however, carries with it a corresponding duty of INS to follow the law in carrying out enforcement inspections. Our members have reported instances in which INS obtains a search warrant to conduct an inspections raid, and, under the guise of looking for employment records, the agents search or seize everything that belongs to the employer -- computers, closets, safes, telephones. In such cases, INS has advised other agencies such as the Bureau of Alcohol, Tobacco and Firearms and the Drug Enforcement Agency to assist in the searches upon discovery of items that might fall within their jurisdictions as well. Congress never intended to grant INS such extraordinary power when it enacted IRCA. We expect INS to uphold its clear duty to comply with the law in conducting such searches.

Not only must INS enforcement efforts be redirected, but they must be made more consistent. In some cases, INS' own investigating officers are not aware of judicial interpretations that affect their daily operations, and are making conclusions based on obsolete policy. In one such situation in California, an administrative law judge had held that an employer had constructive knowledge (and thus had the duty to investigate the authorization of the employee for employment) where the proffered document had a shabby appearance. This decision was followed by INS investigators in this jurisdiction, even well after the judge had been overruled by the Ninth Circuit, which held that the employer had no such duty as long as the document appeared reasonable on its face. The elimination of such practices and the clear and consistent application of current law would ease the difficulties of employers in compliance.

3. The employer sanctions system has failed to deter or reduce illegal immigration. The results of employer sanctions -- expense and confusion for employers, contradictory instructions from INS and OSC, discrimination against some American workers, and overemphasis on paperwork prosecutions -- might be justified, at least in part, as the price of reducing undocumented immigration to the United States. Instead, it has been widely noted that the employer sanctions system has had little if any effect on undocumented immigration and has instead promoted falsification of documents by criminal

brokers and a loss of credibility of the employer sanctions program among law-abiding employers and employees.

In our opinion, it is time for Congress to reevaluate the employer sanctions program and to determine whether the price is worth the result. Unless fundamental changes can be made in the requirements and implementation of the employer sanctions and verification system, the final verdict on employer sanctions will be in the negative.

PROPOSALS TO REFORM THE EMPLOYER SANCTIONS SYSTEM

AILA believes that there is no single solution to this problem or, as the Chair of the U.S. Commission on Immigration Reform (the Commission) has stated, no "quick fixes". However, we believe that immediate steps can be taken to alleviate the existing problems and weaknesses, while still searching for better and more lasting solutions. To that end, we will comment on some of the concepts proposed in H.R.3362, the "Employer Sanctions Improvement Act" (the Bill) and on some of the ideas that have thus far been publicized by the Commission. We will then discuss a number of immediate steps we believe should be taken, pending the study of further solutions.

A. The Employer Sanctions Improvement Act

We recognize that H.R.3362 is motivated by a genuine frustration with the weaknesses of the existing system, and we commend this subcommittee and its Chairman for their sincere efforts to address these weaknesses. However, AILA is concerned that many of the bill's provisions would result in situations that would compound the problems already present in the system, while failing to successfully resolve the faults they are intended to cure.

1. AILA is concerned that the removal of federal preemption Title I of the bill would create an impossibly confusing situation for employers. While we support cooperation between the federal and state governments, we believe that this goal would not be met by the creation of state sanctions programs. Such programs would force all employers to follow multiple sets of rules for employment verification, which would inevitably result in exacerbating the confusion and unjustifiable liability employers now experience in examining documents and completing paperwork. With the introduction of separate state procedures, the balance between verification compliance and discrimination would become even more difficult, as the business community struggles to understand and apply new sets of rules. State programs might not have the balance found in the federal

system of verification sanctions and anti-discrimination provisions, thus increasing the possibility of discrimination in the employment arena. Moreover, employers operating in more than one state will be subject to differing standards from state to state, making compliance a near-impossible task. For the same reasons, AILA also opposes section 103, which authorizes the allocation of funds to states to implement their own sanctions programs.

AILA believes that more effective methods of obtaining cooperation from state and local governments can be found in encouraging these entities to enforce basic labor standards in cases of substandard wages and illegal working conditions.

2. AILA joins with the INS in opposing section 102 of the bill, which would create a private right of action for any "aggrieved party" to institute civil proceedings against employer sanctions violators. Such a system, which would parallel the current system by which INS investigates such complaints, would only encourage needless litigation and result in a multiplicity of suits. The threat of litigation, no matter how baseless, could be used to intimidate and harass employers in all kinds of labor and even commercial disputes. And, without INS screening and investigation of complaints, the resources of the Administrative Law Judge system would be severely strained.

3. AILA agrees with the goal of Title II of the bill, which is to simplify the documentary requirements for establishing employment eligibility, which INS has already attempted to do by regulation. Making fewer documents eligible for verification use will reduce the confusion encountered daily by employers in their sincere attempts to comply with their obligations. However, the list proposed by the bill is so narrow that it would deprive many who are authorized to be employed in this country, including several categories of nonimmigrants and permanent residents who have not yet received their alien registration receipt cards, of the means to demonstrate that authorization. AILA also concurs with INS's opposition to the elimination of the authority of the Attorney General to designate other documents evidencing employment authorization.

4. AILA has several concerns with the proposed increases of penalties in Title III of the bill. Most of the fines that are currently imposed by INS are for technical, paperwork violations -- violations which are occasioned not by noncompliance with the law but by inadvertent errors on the employment eligibility verification form. Employers in these situations are not engaging in the unauthorized hiring of undocumented workers, but, for example, are instead making mistakes in the way they list the documents or date the form. As we already oppose this misdirected enforcement, we cannot support a five-fold

increase in the fines related to it. If the fines for these types of activities were to be increased, AILA would expect that employers whose forms are found deficient in technical matters be given an opportunity to come into current compliance without imposition of a fine, as is the case with technical violations before other agencies, such as OSHA.

B. The Recommendations of the Commission

Based on recent Senate testimony, it is our understanding that the Commission believes that employer sanctions could be an effective deterrent to illegal immigration if the system for verifying authorization to work is improved. To this end, the Commission Chair Barbara Jordan stated in Senate testimony that the "most promising option for more secure, non-discriminatory verification is a computerized registry, using data provided by the Social Security Administration and the Immigration and Naturalization Service." The testimony acknowledges that employers using this new verification system will need a way to determine the identity of the person presenting a social security number and proposes that at least three methods of determining identity be tested--more secure social security cards, counterfeit-resistant drivers licenses, and a telephone verification system.

While AILA cannot comment in detail on the Commission's recommendations until we see the final report, we have several concerns with the broad outline of the recommendation that Commission Chairperson Barbara Jordan presented in testimony before the Senate Judiciary Committee on August 3, 1994.

1. The proposed verification system could be dependent on data bases that are themselves inaccurate and incomplete. The Social Security Administration has acknowledged that over 60 percent of the existing 250 million active social security cards were issued without proof of the individual's identity or immigration status. The Immigration and Naturalization Service does not even have a unified computer record keeping system. The INS central index system is woefully inaccurate and incomplete. In an example reported in the New York Times last week, 650,000 persons who were not even listed in the INS central index were later determined to be in this country legally. INS personnel in Los Angeles have also recently stated that some 60,000 asylum applicants' files were "lost in space" and had never been entered into any record-keeping system, let alone issued employment authorization to which most were entitled.

These data bases or records systems are the very ones that the Commission's proposed verification system would have to rely on. The consequences of error for potential employees, and exposure to liability for employers, are obvious and severe. Extensive

correction and testing of accuracy and reliability of the SSA and INS databases must be completed before they can be considered suitable for this purpose.

2. The proposed verification system could be too costly to implement and maintain. We fear that a verification system that includes all workers (and potential workers) in the United States will be extremely costly to establish and maintain. While we have not yet seen Commission estimates, we do know that the Social Security Administration itself has testified that it would cost \$2.5 billion to issue new fraud-resistant social security cards. And the INS reports that it has just signed a contract for \$300 million for the purchase of new computer equipment that will allow it to begin the task of updating and integrating its records systems.

If the proposed system is as costly as we expect, who will pay for it? Will individuals and employers be required to pay more taxes? Would the expenses have to be taken from other program funds? Will the cost of any accompanying identity document (if there is one) have to be borne by each individual who would be required to present one at the point of employment? These costs, and their source, must be carefully evaluated in relation to the possible effectiveness of the proposed verification system before any final decisions are made.

3. The proposed verification system could require an identity document or system that could burden every American and that might itself depend on underlying documents that are not reliable. The idea of having a fool-proof employment verification system is attractive to many. Yet experts have testified before this body and others that any identity document is only as fool-proof as the documents that must be presented to obtain it. It is well-known that birth records are not secure documents. Social security cards and verification systems based on fraudulent birth certificates could be just as much a problem under any proposed new system as under the existing one.

A verification system that may require all Americans to obtain a new identity or work authorization document, or to obtain and present other identifying information, could be a significant burden that should not be undertaken without sufficient study of the costs and benefits and complete assurance that it would clearly achieve its desired result.

4. The proposed verification system cannot eliminate discrimination. A portion of the discrimination that has been documented by GAO and others under the existing employer sanctions program takes place before employment authorization verification. Discrimination based on appearance, language, or other characteristics may not be remedied

by a new verification system. Furthermore, errors in the computer data base could have a discriminatory impact if employers don't give "foreign" appearing or sounding individuals the same benefit of the doubt they give to others. A high-tech verification system is not in and of itself a cure for discrimination.

5. The proposed verification system may not improve employer compliance or reduce illegal immigration. Employer sanctions have proven to be a burdensome and ineffective way to combat illegal immigration, and it remains to be seen whether any proposed revisions will result in an affordable system that is effective, efficient and does not encourage discrimination. Even while this and other, more long-term concepts are being studied, we urge Congress to mandate that more resources be devoted to other methods that the Commission recommends, and that AILA concurs, would be much more effective in the goal of deterring illegal immigration. Effective border control and management on a deterrence (rather than apprehension) model has proven effective in cases where it has been seriously applied. Labor standards enforcement is an effective way to eliminate "illegal jobs", to protect employees and to eliminate the advantages that compel unscrupulous employers to knowingly hire undocumented workers in order to obtain a favorable edge over the competition.

Important Safeguards to Testing any Employer Sanctions System

If the Commission's recommendations regarding a new employment verification system are examined through pilot programs, AILA urges that several protections be made an integral part of any such testing:

1. Any pilot verification system must provide safeguards against error. No one who is rejected by a pilot system should be denied employment, because establishing accuracy and reliability of the system is a main purpose of any such test. Primary verification using existing I-9 documents should be used to avoid "false negatives" (that is, persons authorized to work when the verification system reports are not authorized or not on the database). The pilot programs should also test methods and approaches to correcting inaccurate records -- what is required of an individual and how long does it take.

2. Any pilot program data base must be limited in scope, access and application to protect privacy. A national computerized employment registry must provide safeguards that protect individual civil rights and privacy. It is unclear how such safeguards can be guaranteed, given that any person is a potential employer, and that employers who have

access to the system could easily use it for purposes other than that for which it is intended. For example, an employer who is also a landlord could check the registry and deny housing to a person who is not "verified" to work but is nonetheless legally present in the United States.

3. **Any pilot program must provide safeguards against, and resources in the event of, discrimination.** A new verification system will not, in and of itself, reduce discrimination. Information about, and access to, recourse in the event of discrimination must be strengthened for those classes protected from such activity.

4. **Any pilot program must be carefully evaluated to determine whether its cost will be outweighed by its effectiveness in achieving substantial reductions in illegal immigration.** A careful cost/benefit analysis must be done in order to determine whether a pilot program, as recommended by the Commission, should be implemented. The cost-effectiveness of a new verification system should be weighed against other methods of deterring illegal immigration, such as increased border enforcement and labor standards enforcement, as outlined above and as embodied in other Commission recommendations.

5. **Any substantial changes to employment verification systems must be based on comprehensive, pragmatic testing and proven conclusions, not on leaps of faith.** Some longtime proponents of the employer sanctions system remain reluctant to admit its failure at reducing illegal immigration despite the obvious evidence. If meaningful proposals to reform employer sanctions are to be made, they must be based on concrete evidence that the burdens and expense of employment authorization verification will clearly result in a observable reduction in undocumented immigration. There are some who embrace their own favorite approach to reform as an article of faith. If you do not agree with their proposals, you must not be serious about reducing illegal immigration. This sort of "theological" approach to immigration law enforcement must be rejected by those seriously concerned with U.S. immigration policy. America does not need another expensive, ineffective immigration enforcement program.

IMMEDIATE RECOMMENDATIONS

The current employer sanctions system does not effectively address the problem of illegal immigration it was designed to cure, and is a major burden to employers. Even while long-term solutions involving major change to the current verification system are being

studied, we recommend certain immediate measures which, we believe, will address many of the weaknesses of the current scheme.

1. **The enforcement priorities must be redirected away from technical violations of nonmaterial paperwork requirements.** INS should be given clear guidance and even a legislative mandate on this subject. As discussed above, the vast majority of the violations currently found by INS are for technical, paperwork errors by otherwise law-abiding employers. This strategy, while easier, does little to reduce knowing hires of undocumented workers. Enforcement resources would be better spent on the more difficult but more productive task of investigating and prosecuting employers who knowingly hire undocumented workers in significant numbers.

2. **Paperwork violations must be treated differently from substantive ones.** Under the current system, better protection must be afforded to employers for paperwork errors. It has been argued that the current mitigation system protects employers in this regard, but this is not the case where neither the statute nor the regulations apply a materiality standard to mitigation (and the seriousness is, by regulation, only one of five factors to be considered in mitigation). Moreover, employers should be given notice and an opportunity to cure and comply, as many other agencies do for violations of basic record keeping standards. Opportunity to come into current compliance and the elimination of fines for paperwork violations in the absence of knowing employment would permit employers to avoid the harshness of the present system, which results in significant automatic fines for truly technical mistakes that are undetectable until too late.

3. **INS must invest more resources in reducing the confusion surrounding the verification process.** INS's recent efforts to reduce the types and numbers of documents that are acceptable for verification are steps in the right direction. INS must be encouraged or required, and given the necessary resources, to develop the capability to issue Employment Authorization Documents upon application and without delay. Policy leadership by the Justice Department to eliminate contradictions and inconsistencies between INS and OSC, as well as other agencies, are long overdue. Such efforts, in conjunction with consistent and clear education of employers and employees of their particular responsibilities, will assist employers in complying without discrimination. In addition, a working knowledge that is up-to-date will enable INS to serve employers more consistently throughout the country.

4. There must be more coordination in the enforcement of labor standards. Cooperation among the Department of Labor, state labor agencies and the INS would greatly decrease any exploitation of undocumented workers. The enforcement measures must first target serious employment law violations involving sub-minimum wages and substandard working conditions.

We thank the Subcommittee for providing this opportunity for allowing us to voice these concerns and we remain available for any questions.

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Mr. MAZZOLI. Mr. Fragomen. Nice to see you again.

STATEMENT OF AUSTIN T. FRAGOMEN, JR., ESQ., CHAIRMAN OF THE BOARD, AMERICAN COUNCIL ON INTERNATIONAL PERSONNEL

Mr. FRAGOMEN. I appear in my capacity as chairman of the board of the American Council on International Personnel. Our 250 member organization represents multinational companies interested in the flow of skilled personnel. The Immigration Reform and Control Act and employer sanctions are of particular interest to our members who are among the largest employers in the United States. I appreciate the opportunity to appear before this subcommittee to discuss that law and the recommendations of the Commission.

Following the thoughts of Mr. Buffenstein, I would first like to express gratitude to you, Chairman Mazzoli, in behalf of me and members of the American Council of International Personnel for the leadership that you have shown in chairing this subcommittee. Having worked on the staff at the beginning of my career, I well appreciate that this is a thankless task in Congress, and I think you can rest assured that you have made a very significant contribution to a coherent immigration policy.

Mr. MAZZOLI. Thank you very much, sir. I wasn't going to mention it, but of course we do go back to the sort of beginning of this when you were with the committee, and it has been a very interesting and a very rewarding experience. It hadn't been one without its ups and downs. I mean, that is the nature of this whole study, because you are studying human beings and how they come and go.

But it has been one, I think, where we perhaps, to get back to what my friend from California has said, where there is a kind of difficult time right now, and I think it is important for us to be sensible and to be prudent and to be circumspect about how we attack these problems, and whether it is this issue of employer sanctions or illegal entry or whatever. And I hope that our committee can continue to make a contribution to this Congress, and maybe afterward as well. But I thank you very much for those comments.

Mr. FRAGOMEN. ACIP is the only major business organization which did not oppose employer sanctions. Frankly, our members don't like employer mandates, but we accepted the necessity of employer sanctions as a key element in controlling illegal migration. However, we were assured that border enforcement would be made effective and that the verification process would be simple.

Employer sanctions is not working. Levels of illegal immigration remain high. INS enforcement overemphasizes paperwork violations, not keeping undocumented aliens out of the work force. Border enforcement is wholly inadequate. Fraudulent documents are readily available. Conscientious employers are totally frustrated by their inability to ensure hiring a legal work force. The process is too complicated to be properly administered by even a sophisticated employer, and the current system creates discrimination based on alienage.

If sanctions are going to continue, they must be made effective. ACIP believes this could only be accomplished through a secure identity card or number tied to an easily accessible verification

data system. Credit card technology could be used for employment verification in such a system. Perhaps the Government should contract out designing such a system to a major credit card company. The Social Security system already has a data base for all citizens and aliens who are legally working. This could serve as the primary data base for verifying employment eligibility. Aliens would need to obtain a Social Security card which could only be secured by first obtaining an appropriate authorization document from the INS.

We appreciate that the Social Security data base needs to be upgraded, but this could take place over a period of time while implementation of the verification program was phased in. The major objection in using the Social Security card seems to be in using the card for identity. Perhaps to begin with, a separate identifying document could still be required, at least on an interim basis.

We do not believe that a work identification document or number would become a national identification card. A system can be created that restricts use of the work authorization document to employment verification purposes and also restricts access to the data base so as to protect privacy and personal freedom. Employer compliance would be simple. The burden of providing the data to verify employment eligibility would be placed on the Government where it properly belongs. The incentive for alien discrimination would be eliminated.

We have carefully reviewed the recommendations of the Commission and compliment Barbara Jordan and other members of the Commission for producing such a thoughtful and comprehensive document. Although we endorse the basic recommendations of the Commission, we believe that delaying implementation of a universal verification system effectively delays implementation of employer sanctions.

The current system does not work because of the lack of a centralized data base. Until the system is universal, employer sanctions will have a negligible effect in keeping undocumented workers out of the work force. Until a meaningful system is in place, INS should concentrate its resources on border and entry control and deemphasize workplace enforcement.

Finally, Mr. Chairman, ACIP opposes ending Federal preemption, increasing fines, allowing private rights of action, on the same basis; namely, that the basic problem with employer sanctions is that it won't be effective until there is a meaningful verification system adopted first.

Thank you.

Mr. MAZZOLI. Thank you very much, Mr. Fragomen.

[The prepared statement of Mr. Fragomen follows:]

TESTIMONY OF
AUSTIN T. FRAGOMEN, JR., ESQ.
CHAIRMAN OF THE BOARD
AMERICAN COUNCIL ON INTERNATIONAL PERSONNEL
515 MADISON AVENUE
NEW YORK, NEW YORK 10022
(212) 688-2437

ON

EMPLOYER SANCTIONS REFORM

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL LAW, IMMIGRATION, AND REFUGEES
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC

CHAIRMAN ROMANO L. MAZZOLI

SEPTEMBER 29, 1994

Mr. Chairman and Members of the Subcommittee, I am Austin Fragomen, and appear in my capacity as Chairman of the Board of the American Council on International Personnel, or ACIP. Our 250 member organization represents multinational companies interested in the international flow of skilled personnel. Over the past 15 years, we have also been intimately involved in the development and implementation of the employer sanctions law, more commonly known as Simpson-Mazzoli. I appreciate the opportunity to appear before you today to discuss that law and, in particular, the recommendations of the Commission on Immigration Reform relating to it.

Before getting to the meat of my presentation, I want to make three personal asides. First, to the Chairman of this Subcommittee, I want to reflect on behalf of me and all ACIP members how much we will miss his leadership when he retires from public life at the end of this Congress. As the Chairman knows, I have watched this Subcommittee closely for almost three decades, including several years when I served as a Member of its staff. He has taken upon himself one of the most thankless tasks in Congress, trying to design a coherent immigration policy, and carried it off with distinction. I know he will remain active in the private and educational sectors starting in January, and I look forward to continuing our association.

Secondly, I want to tip my hat to Professor Barbara Jordan for accepting the responsibility of Chairing the Commission. I am sure she had plenty of more enjoyable tasks in Texas, yet she has once again committed herself to an important public cause, as she has throughout her life. President Clinton is to be commended for selecting her, and she is to be commended for developing a consensus so quickly and forcefully on such a critical issue.

Finally, I want to pay tribute to Jerry Tinker, Staff Director of the Senate Immigration Subcommittee, who was taken from us so suddenly less than two weeks ago. Though he was based on the other side of the Capitol, I know he worked closely with you Mr. Chairman, many of your colleagues, and your Subcommittee staff. I had the privilege

of working with Jerry for over two decades, and he will be sorely missed. His impact on not just this country but the entire world was remarkable, as was pointed out by Senators Kennedy and Simpson in their eulogies last week. He was a true public servant.

Now to the substance of this hearing. During the debate on the Immigration Reform and Control Act of 1986 (IRCA), ACIP was in the somewhat unusual position of being the only major business organization which did not oppose employer sanctions. Frankly, our members, like all businesses, were not thrilled with the idea of another employer mandate, especially one that could lead to large fines and even prison sentences in the extreme case. Yet we accepted the necessity of sanctions as an element of controlling illegal immigration, along with tough border enforcement. We were also promised that the employment verification process would be simple.

As I have testified before this Subcommittee on previous occasions, ACIP has been sorely disappointed in the directions employer sanctions has gone over its initial eight years. It has failed by many measures:

- o The absolute levels of illegal immigrants continue to be high, reportedly now at levels approximating those at the time IRCA passed, in the 3 to 4 million range.
- o INS enforcement has focused on paperwork violations, not punishing those who knowingly hire illegals. The report to this Subcommittee by the General Accounting Office last week demonstrated one major reason--the absence of resources devoted by INS to the employer sanctions enforcement effort. With such few resources, all that INS can do is go for the easy attack, namely finding flaws in the I-9's and fining the employers. ACIP members, most of them with thousands, tens of thousands, or even hundreds of thousands of I-9's on file are particularly susceptible to paperwork fines. For no matter how careful a company is, I can guarantee you that a percentage of the I-9's will be wrong.

- o Border enforcement has remained weak. No one ever believed that sanctions could be the entire solution, yet border enforcement has not increased. ACIP has noted with interest the successful effort by the Border Patrol in El Paso and the plans to extend that methodology to other locations, especially the Southern California-Mexico border. We hope that INS increases its border enforcement dramatically, especially with the additional funds provided by Congress, so that our companies can feel they are in the effort together with the government to control illegal immigration.

- o No good deed goes unpunished. The existing system puts the most conscientious employers in a terrible position, in many ways a worse position than before IRCA was enacted. A careful employer will complete every I-9 for every new hire, and ask the new employee to present one document from List A or one from List B and one from List C. Because of the overdocumentation provision of the law, the employer cannot ask for more than that, and cannot specify which documents are to be presented without facing possible discrimination charges. The employer, especially in some industries in some parts of the country, may have a very strong feeling that a substantial percentage of the documents presented are fraudulent, but that employer cannot press the employee for more documentation and cannot even check with the INS about the validity of the documents presented, because of a court case settlement in 1988. So the employer dutifully completes the I-9's, having a very strong suspicion that some proportion of the workers are unauthorized. In due course, INS visits the employer and verifies through its own checking what the employer suspected--many of the employees presented fraudulent documents. Of course, the employees are not arrested or deported, but the employer is forced to terminate the employees. Then the employer hires replacement workers, who, of course, also present fraudulent documents, and the cycle starts anew. These INS investigative visits and repeated workforce turnover create considerable disruption for the employer's business operations. Because INS tends to enforce the law through targeting an industry in one geographical area, what they create is a form of

musical chairs for workers who, when they get terminated, circulate to another employer. One difference from musical chairs, though, is that almost every worker ends up with a seat in this game.

- o The process is ridiculously complicated. As you will hear from Patricia McDermott of Digital Equipment Corporation, a sophisticated company with a sophisticated human resources department, the current system has even large employers pulling their hair out. It is a nightmare for small employers. Eight years after enactment, INS and the Office of Special Counsel still do not agree on many issues, though they are both part of the Department of Justice. While INS's heart is in the right place trying to simplify the current I-9 process, which you discussed at your hearing last week at length, frankly, the changes INS proposed in its initial rule in the fall of 1993 were so minor as to not be worth the bother. For all the flaws in the current system, at least our members have trained their employees how to deal with it. To make minor changes now, such as eliminating the Merchant Mariners card from the list of identification documents as INS proposes, will only create more confusion for employers. Our advice to INS has been, either fix the problem fundamentally, or do not fix it at all. Tinkering only makes life worse for employers.

- o The system does not eliminate discrimination. With few exceptions, our members do not discriminate, at least in the classic sense of the word. There are so many other federal, state, and local laws on the books to which they are susceptible if they discriminate that they spend enormous resources trying to prevent classical discrimination. Yet they may discriminate under the technical definition of the immigration law by treating some job applications differently than others in the I-9 process. No matter how many times people are taught the rules--such as the prohibition against asking for specific documents or for too many documents--they still get violated. It is human nature to ask for specific documents if you think a person may not be work authorized.

With these flaws, what is the solution? A solution which has been proposed by many, and which we do not support, is eliminating sanctions. Those who advocate such a position are advocating, in essence, open borders. ACIP believes that controlling the flow of aliens into the U.S. is a reasonable public policy goal, and should be pursued.

So if sanctions are to continue, they must be effective. ACIP believes, as has virtually everyone who has examined the issue, that unless there is a secure identification card or number, tied to an easily accessible verification data system, the flaws in the current system will persist and even expand. When I say everyone agrees on this, I exclude those who oppose the entire concept of employer sanctions, for not only do they oppose sanctions, they also oppose a meaningful verification system. While I do not question the sincerity of their beliefs, it is no accident that those who oppose sanctions also oppose meaningful reform.

Every day, tens of millions of Americans makes tens of millions of transactions with their credit cards. Those of us old enough to remember know that when this system first started, it was based on trust--the merchant had to trust the customer. Then, as abuses grew, the credit card companies began issuing lists of valid credit card numbers. I can remember standing in line impatiently as the clerk flipped through the cumbersome book checking for my number. This system cut down on abuses, but merchants and customers got frustrated because of the time involved in the checking. Finally, over the past few years, virtually every merchant who accepts credit cards, and most do, whatever the size, has gone to an on line telephone verification system keyed to the code embedded in the credit card.

Are there problems in that system? Certainly there are some, and I encourage this Subcommittee to talk to those credit card companies to learn about their problems. Fraud occasionally does occur. Sometimes cards get improperly rejected. Sometimes the telephone verification system technology is slow or breaks down altogether. But in the larger scheme of things, the system works extraordinarily well.

I see no reason the same system cannot be used for our employment system for all employees in this country. And if the government has to contract out the system to Visa, MasterCard, American Express, Diners Club, Discover, or one of the other credit card companies to get it done quickly and properly, then that is what should be done. Keep in mind the scale of new hires every day or every year is dwarfed by the volume of transactions on credit cards. If they can do it, why can't the government?

Let's look at the objections. Cost. I frankly do not know the cost. I understand the Commission is examining that issue. But given the technology and databases already available, I do not believe it should be extraordinary. Social security already has a database for all citizens and those aliens who are legally working. Admittedly, there may be a few undocumented aliens who have obtained legitimate social security numbers, but that is a minute part of the workforce and has never been identified by any experts as a major problem. INS has a database for all aliens, but that database does not need to be part of the employment verification system. Even aliens authorized to work need social security numbers. The technology for accessing the database exists--credit card companies, merchants, and customers are used to it by now. To the extent there are flaws in the system, they can easily be dealt with. For instance, occasionally a valid credit card registers invalid or over the credit limit when presented to a merchant. A simple telephone call normally solves the problem. The same can be true with a worker identification card.

I also contend that the cost of implementing such a system is minuscule compared to the cost of continuing the job magnet in the U.S, some of the costs of which were recently documented by the Urban Institute. And it is minuscule compared to the cost of a system that is so flawed that illegal aliens thumb their noses at the INS on the front page of a national newspaper, as recently occurred.

The second complaint is that it will be discriminatory. That is the most ludicrous of all arguments. What is discriminatory about the credit card system? Every merchant requires every purchaser to present a credit card when making a purchase, and then

validates that purchase. That is true whether the person is citizen or alien, fourteenth generation or a new arrival. The one change to employer sanctions which will remove any possibility of any employer treating employees differently is a work authorization card. Everyone concerned about possible discrimination in the workplace arising from employer sanctions ought to embrace the worker verification system ACIP advocates.

Certainly the issuance of credit cards is not universal, but for those who have them, the treatment is nondiscriminatory. Because everyone employed in our workforce is required to have a social security number, everyone legally authorized to work is entitled to the card and number which will prove they are work eligible.

The argument that a work identification card will turn into some type of internal passport is not credible. With all the data held by the governments at all levels on each of us, and all the data held by people in the private sector about each of us, we are already exposed to tremendous privacy concerns. But we deal with them. Access is limited to medical records, credit reports, and other information. Cards which are issued are limited in their use. Every driver is required to have a drivers license to drive, but that does not give the police or any authority the right to stop you on the street and ask for your drivers license if you are not driving. Similarly, a work identification card can be limited in its use to work identification.

In sum, ACIP believes it is clear that the goals of verifying employment eligibility, restricting access to the database on which the employment eligibility system is based, and restricting the use of the card presented for employment eligibility can all be met without threatening any citizen's or alien's privacy or rights.

The simplicity of the system is its greatest beauty. Every employee knows the rules. Obtain a work identification card from the government, most likely a secure social security card. If we want to have a separate card for aliens authorized to work, such as a green card

and some type of employment authorization document that is fine, though I do not see why the entire system cannot be keyed to one identification number.

Every employer also knows the rules. Either the employee presents the card, and is eligible to work after it has been verified, or does not present a verifiable card, and is not eligible to work. If the prospective employee insists he or she is eligible to work though the card produces a negative response, then there can be an 800 number the employee and employer can call to pursue the matter, just as a credit card customer can talk to the credit card company if the payment authorization does not go through. We recognize the system I have outlined may need some refinements, but the basic principles are straightforward. Various alternative strategies can be examined. But I do not believe that this issue is one of those cases in which the devil is in the details.

Such a system is not foolproof. No system is. But we already know that when the INS checks the work authorization of employees, they usually can find out quickly whether presented documents are authentic and establish employment eligibility. Most unauthorized workers readily admit they are illegal when confronted with information. The system ACIP is advocating, if implemented, would have the vast majority of illegals confronted prior to hiring, which is the object of the exercise.

Most importantly, the system ACIP is advocating puts the burden for verifying employment eligibility where it should be, namely on the federal government. All that the employer would have to do is conduct the administrative check of validating the employment eligibility document back through the government maintained database. Again, the credit card analogy is instructive. When a merchant accepts your credit card in exchange for services or merchandise, the merchant is not personally commenting on your creditworthiness. The credit card company makes that decision in issuing you the card. All that the merchant is doing in the transaction is verifying that the card presented is valid for transactions. Similarly, for employer sanctions, the employer should not be expected to try

to determine an employee's employment eligibility. All that the employer should have to do is verify that the document presented is acceptable to the government.

I realize the Commission is not yet willing to take the dramatic leap of introducing a full-blown card and verification system. We are a country which likes to make changes incrementally, and I can appreciate the concerns of the Commissioners about moving too precipitously in this area. ACIP is realistic enough to know that the perfect is often the enemy of the good, and so reluctantly endorses the Commission recommendations. Our reluctance is predicated only on their unwillingness to recommend moving to a card and telephone verification system immediately across the country. We share the Commission's opinion that President Clinton already has sufficient statutory authority to implement the pilot program, and hope that it will begin as soon as possible. We also hope that the Social Security Administration will stop being what appears to us as a major obstacle to implementing the verification system.

I remind the Commission and this Committee, however, that by delaying full implementation of the type of system ACIP advocates we are also effectively delaying full implementation of employer sanctions. Let's be clear about this. The current system does not work because of the fundamental problem with the employment verification system. It needs an essential part changed radically. Without that change, the flaws I and so many others have outlined will not disappear. I would go so far as to suggest that until a truly effective employment verification system is in place, INS stop workplace enforcement and redeploy all of its personnel to border enforcement.

Before concluding, Mr. Chairman, I want to make a few brief observations on your bill, H.R. 3362, to make some changes in the employer sanctions law. We understand your frustration with the current system, and, as I have indicated, believe major changes in the verification system and enforcement activities of INS are necessary to stop illegal immigration.

However, ACIP opposes several provisions of your bill. In particular, we oppose ending federal preemption of state employer sanctions laws. Most of our firms operate in many states, and do not want to be in a position of having different employer sanctions laws in each state. Immigration is a federal responsibility, and there should be one employer sanctions law. Also, the same flaw that undermines effective federal enforcement of employer sanctions--namely, the absence of an effective, nondiscriminatory employment verification system--would undermine similarly any state employer sanctions law.

We also oppose the private right of action concept in your bill. GAO already indicated to your Subcommittee in its testimony last week that INS has many more leads, including leads from the Department of Labor (DOL), than it can pursue. Many of its enforcement actions are already based on tips. A private right of action, though, will lead to frivolous suits and harassment cases that have more to do with unfriendly competition or union organizing than with employing illegal aliens. We similarly question the value of a proposal to reduce the documents that can be presented for I-9 purposes, given the fundamental flaws in the current I-9 system I previously covered.

Finally, we oppose increasing the fines. As I have indicated, the problem is not that the fines are too low, but rather that INS focuses on fines for minor paperwork violations rather than for knowing hires of illegals. INS has been collecting plenty of money from employers. It is much more than a "cost of doing business," as some allege, when INS starts fining employers \$100 to \$1000 for each I-9 with a mistake. But unless INS focuses on knowing hires of illegals, the basic enforcement thrust will not be effective. I know those cases are harder for INS to prove than paperwork violations. One of the reasons they are harder traces back, again, to the verification system. Because fraudulent cards are often so well done, INS has a hard time proving the employer "knowingly" hired an illegal immigrant. However, if the card and telephone verification system is implemented, then if an employer has illegal aliens on the payroll, it will be much easier to prove those workers were knowingly hired.

In conclusion, Mr. Chairman, I want to make three observations about where employer sanctions fits into our economy in a more fundamental way. First, border enforcement is essential as part of an overall control strategy. Secondly, there is a large demand for undocumented aliens in many parts of our labor market. If we truly want to keep them out of the labor market, can we realistically expect to fill all those positions with legal workers? I suggest not, at least under our current immigration system. Instead, we must look much more seriously at regulating the flow of necessary, and I emphasize the word necessary, workers, especially in many entry level positions. When the bracero program was ended in this country in the early 1960's, it had been widely discredited. I have no doubt the program had enormous problems. But those workers did not stop coming just because people in Washington wiped it off the books. Those agricultural workers just started coming illegally. They went from a situation in which arguably they had inadequate labor protections, but labor protections nonetheless, to a situation in which they had no labor protections. I am not suggesting returning to the bracero program, but I do suggest we take a long, hard, and, to the extent possible, nonideological look at a carefully regulated program for workers in lower end occupations. And my final point is that because of the huge undocumented population that the current system engenders, we are also encouraging the growth of the cash economy. This underground economy is unfair to the workers, to the competitors of those employers who hire employees on the books, and to the national treasury which loses access to needed tax dollars.

Thank you for allowing ACIP to be represented here today. I look forward to working with you and the Committee on this important issue.

Mr. MAZZOLI. Ms. McDermott.

STATEMENT OF PATRICIA F. McDERMOTT, MANAGER, CORPORATE IMMIGRATION DEPARTMENT, DIGITAL EQUIPMENT CORP.

Ms. McDERMOTT. Digital is a large multinational corporation. We have 82,000 employees, 36,000 in the United States, 12,000 come under IRCA. I have the responsibility for IRCA compliance for the corporation.

To comply, we established a written policy. We developed training materials; we provide in-house training on an ongoing basis. We use outside experts on IRCA for training. We established a hotline which is in my office that is used by the corporation when there are questions on I-9's. We continually audit our I-9's to ensure that we do not have paperwork violations.

Our policy developed procedures to eliminate discrimination in the hiring process. Employment authorized verification documents are not required until the new hire appears for orientation. During our interview process, we tell the applicant verbally that they have to comply with the IRCA regulations. Our offer letter contains a paragraph explaining the compliance. We give an I-9 with our offer package with instructions for the new hire to show up at orientation with appropriate documentation.

Even with continual training, reminders, the hotline that we have, we find that again, in auditing our I-9's, we have paperwork violations. The form is not what I consider user-friendly. The new form has the hire date in the middle of the paragraph. It is occasionally overlooked by the people who are filling out the I-9's.

List B and list C would be very, very important if they were labeled. What I find very often is that people get the two lists mixed up. I get eligibility documents under identity and identity documents under eligibility, which I believe is a paperwork violation and we have to go about changing that. The old form lent itself—we have birth certificates checked off, but no one ever bothered to put down verifying documentation, or they did not record anything that would show that they looked at a birth certificate, so that when we go out to audit, we have to call employees back and ask them to again submit a document from list C. This creates problems in the work force.

When we go out to audit, usually our sites have about 1,000 employees' files that we will be going through for I-9's, and there is a level of anxiety when we start requesting employees to come back with documentation, especially if they have been hired 2 or 3 years ago.

Continual auditing is also expensive. No matter what an employee checks off under section 1, they are allowed to present a driver's license and a Social Security card. We accept those documents as face value. We are not trained in identifying fraudulent documents, and it is possible that I can get an I-9 that complies with the law and end up not knowingly hiring an illegal alien, because someone has presented documents that look OK, but they are fraudulent, and we have no way of checking that.

What we do support is a computerized fraud-proof registry verification system that allows an employee to verify work authoriza-

tion. I believe that this would stop illegal alien hiring, prevent discrimination, and eliminate paperwork violations. Thank you.

Mr. MAZZOLI. Thank you very much. We appreciate it.

[The prepared statement of Ms. McDermott follows:]

STATEMENT
on
DETERRING EMPLOYMENT OF UNAUTHORIZED ALIENS
before the
SUBCOMMITTEE ON INTERNATIONAL LAW,
IMMIGRATION, AND REFUGEES
of the
HOUSE COMMITTEE ON THE JUDICIARY
for
DIGITAL EQUIPMENT CORPORATION
by
PATRICIA F. MCDERMOTT
September 29, 1994

INTRODUCTION

Digital Equipment Corporation is the leading worldwide supplier of networked computer systems, software, and services. Digital pioneered and leads the industry in interactive, distributed and multivendor computing. Our gross revenue for the fiscal year 1994 was \$13.4 billion and our net sales were \$7.1 billion. Digital Equipment Corporation has 82,000 employees worldwide, facilities in 100 countries and ranks in the top 50 of the Fortune 500 companies. There are approximately 36,000 employees in the United States of which 12,000 are covered under the Immigration Reform and Control Act of 1986.

I am Patricia McDermott, Manager of the Corporate Immigration Department for Digital Equipment Corporation. I have held this position for the past ten years. My responsibilities include compliance with the Immigration Reform and Control Act of 1986 and its amendments. I was involved in the original task force which promulgated the guidelines that Digital follows for compliance in this area.

BACKGROUND

Digital appreciates the opportunity to express its concerns on deterring the employment of unauthorized aliens through the employment verification system under the Immigration Reform and Control Act of 1986.

When this law was enacted, Digital formed a task force to develop policies and deliver training to our Personnel organization to ensure compliance. A process was developed to avoid discrimination in our hiring practices. During the interview, all applicants are verbally informed of the need to comply with providing employment eligibility documentation as listed on the I-9 form. Written instructions for compliance are contained in our offer letters. The I-9 form is part of the offer package and the applicant is informed that documentation to complete this form must be presented at new hire orientation.

Digital set up formal training in-house for its Personnel organization, developed written material including a one page guide on how to complete an I-9, sends reminders and updates electronically as changes occur, brings in outside consultants when available for training, set up an IRCA Hotline to answer questions and continually audits I-9's for compliance.

Although Digital continues to provide training to its Personnel organization, it has been observed through internal auditing that paperwork violations do occur. Digital continually performs self-audits of its I-9 forms and makes the necessary corrections to insure compliance.

It is my understanding that this law was passed to deter the hiring of illegal aliens. In practice, the constraints placed on businesses in completing the I-9 form does not support this premise. It is possible to have I-9 forms completed correctly and unknowingly have hired illegal aliens. In most cases, no matter what status the employee checks off under Section 1, a driver's license and a social security card may be all the employer views to complete Section 2.

Digital spends more time insuring that I-9 forms are correctly completed, to avoid fines for paperwork violations. Digital is not knowingly hiring illegal aliens. Our Personnel organization is not trained to determine if fraudulent documents are being submitted by the employee. Documents are accepted at face value unless a document appears to be altered in some manner.

Digital supports the development and implementation of a simpler, more fraud-resistant system for verifying authorization to work.

CONCERNS/RECOMMENDATIONS

- 1) Restrictions in place to assist in avoiding discrimination can result in unknowingly employing illegal aliens.

It is possible to have a completed Employment Eligibility Verification I-9 Form that meets all compliance regulations and still have an illegal alien on the payroll.

An employee completes the I-9 form, checking off Permanent Resident or Alien authorized to work in the United States, provides an employer with a driver's license and a social security card for employment verification. The employer has to accept these documents at face value and cannot insure that these documents are not fraudulent.

- 2) Employers should not be in the enforcement business. It is nearly impossible to train all those involved in the hiring process in the correct completion of the I-9 form, let alone have them be responsible for identifying fraudulent documents.

There should be a non-discriminatory verification computerized registry system developed that would allow employers to obtain a code which would be entered on the I-9 form after inputting an employee's social security number. This approval code combined with an identity document such as a driver's license, state issued ID card, passport, or alien registration card would insure that illegal aliens are not being hired.

Everyone who is eligible for work has a social security number. This process would work extremely well for those individuals within the "protected class" which consists of U.S. citizens, permanent residents, temporary permanent residents, refugees or asylees.

This type of computerized system would also act as a check and balance system to insure that only the person issued a social security number could use it. The system could flag social security numbers that are falsely being used.

Aliens who have nonimmigrant temporary visas could be required to present documentation from U.S. Immigration that verifies their employment authorization.

This process would take the employer out of the enforcement aspect of the law and eliminate the need for paperwork violation fines. It would allow the enforcement agencies to concentrate their efforts on those employers who knowingly hire illegal aliens.

3) The Employment Eligibility Verification Form is not "User Friendly".

What appears to be a simple form can cause much consternation when being completed by both the employee and employer.

For example, the block to record the hire date is in the middle of a paragraph and can be easily overlooked. List B and List C should be labeled on the form to identify what they each represent:

List B / Identity

List C / Eligibility

CONCLUSION

Digital supports "Employer Sanctions" for those employers who knowingly hire illegal aliens.

The development and implementation of a computerized registry using data provided by the Social Security Administration and the Immigration and Naturalization Service would insure that only employees legally authorized to work in the United States are employed.

This computerized registry would allow the enforcement agencies to concentrate on employers who knowingly hire illegal aliens. The registry would also stop the use of fraudulent social security numbers, flag a social security number when it is being used by more than one individual, end the hassle over the use of laminated, plastic, or metal reproductions of their social security cards.

This type of system will save the business community money by reducing the resources needed to comply with this law, reduction in paperwork, curbing new hire problems and lowering the risk of discrimination while insuring that illegal aliens are not employed.

Mr. MAZZOLI. Mr. Stein.

**STATEMENT OF DAN STEIN, EXECUTIVE DIRECTOR,
FEDERATION FOR AMERICAN IMMIGRATION REFORM**

Mr. STEIN. Mr. Chairman, thank you very much for the opportunity to testify.

My name is Dan Stein, executive director for the Federation of American Immigration Reform. I, too, would like to salute the chairman and thank you for your years of service on this very important issue. Your approach to this issue, your fairness, your firm sense of impartial justice, your reasonable approach to this thing has been very refreshing and an important component in helping fashion so many of the important policies that are part of our laws today. And our sense is that as this issue becomes more and more volatile over the next 10 or 15 years, your presence will be missed that much more.

Mr. MAZZOLI. Well, thank you very much. I have enjoyed it. As I have said to the earlier people, it has been a very important part of my own formation as a person. It is kind of interesting, when I came here I wasn't exactly a spring chicken, and yet as a result of these hearings and traveling around the country and seeing things, it is amazing how much you develop as a person just by studying this subject. So I think it has been a development for me as a human as well as a legislator, and I hope in the years ahead to remain in some fashion connected with the subject area, and I hope that our paths cross often for all of us, really.

Mr. STEIN. We hope you do, Mr. Chairman. And we appreciate your leadership on this hearing and on your proposed bill as well.

In addition to that, we support the Commission recommendations and want to salute Prof. Barbara Jordan for the very, very important work she did on very short notice in taking the reins of this Commission earlier this year, late last year, putting out a comprehensive report on illegal immigration management and control which taken in its entirety is remarkably thorough in its dimensions and dynamics.

The most important and apparently contentious recommendation is the one relating to the national registry verification index. This is a proposal which has been around actually for quite some time now in various forms and iterations since at least 1979. Certainly none of us who worked on the 1986 law expected by now that we would be relying upon the same variety of documents that are already—that remain lawful and usable under employer sanctions. Many of us had thought that 8 years down the line, employers would still be trying to second-guess such a broad array of documents. Many of us would have never believed that sanctions would have had the impact that it already has had. But they clearly can be much more effective.

The changes made to the immigration laws in 1990, which tightened antidiscrimination provisions for disparate treatment in requesting documents, when taken in light of the existing documentary situation is, in our view, an unacceptable status quo. It is really putting employers between a rock and a hard place, and they are being whipsawed between trying to comply with the almost impossible task of understanding which documents are legitimate and

which documents are valid, for which purposes, under which conditions.

The 1986 law laid out a very specific set of reports and a specific path for the executive branch to pursue in order to try to get to the root of what the problems would be with verification. Many of those reports have come out. Those reports, along with three Commissions and the General Accounting Office, have all recommended the same thing, which is precisely what this Commission has already recommended. Everybody who has looked at this issue from my kind of a neutral and detached standpoint has come to the same conclusion. There is a need for a specific and discreet Federal data base through which there could be electronic verification of certain employer/employee information at the time of hire. And, therefore, we again support these recommendations.

Looking back over the last 8 years, what we find is that there is a very obvious mechanical problem here at the Federal level, and that mechanical problem manifested itself on Friday with the administration's reaction to the Commission's report. There is a bifurcation or fragmentation of responsibility at the Federal level for getting this done. The Social Security Administration seems to have no interest in getting it done. They are uniformly resistant, not just this administration, but past ones as well, with working with their information and their data base to try to get some kind of a new data base created which would be based on some of their information. They claim only responsibility for Social Security documents.

And then there is the Department of Justice. Commissioner Meissner has stated that her jurisdiction only extends to citizenship, naturalization or citizenship documents, and immigration documents.

And then the Secret Service has responsibility for birth records of all of the different States, but they don't have any responsibility federally for any kind of integration of those birth records with any Federal document or data space.

So we are here once again looking at a very well-crafted, competent proposal by some of the most seasoned veterans, immigration watchers in the country who come out with a very clear and specific directive, but they don't exactly state who is supposed to get it done.

Well, the administration came out on Saturday or Friday, the reports came out Saturday, and said that, well, they have their own idea and they reject the idea of this registry. They reject the idea of a single work document, even though the GAO and three Commissions have recommended it.

The Jordan Commission's ground-breaking recommendations on development of a birth and death registry, secure citizenship, a birth record issuance with a linked national Federal registry is the basis of, when linked to the birthing process, of a secure, national verification index. We have the capacity, but right there. All we have to do is move to put it into place for children who are born tomorrow.

We need to try to separate out the technological objections to what we are talking about from the political ones. Many of the objections being made to this whole process are being made because

people are politically opposed to the internal enforcement of immigration laws. They either oppose them in their entirety, or they oppose any kind of internal enforcement.

The only issue, the only legitimate technological issue involved here is if we establish this kind of verification system, would there be any illegitimate use of lawfully provided information, or would there be the unlawful sharing of information for illegal purposes to unauthorized persons? So far as we are aware, nobody has raised any credible allegations that that kind of thing could occur in this particular case.

And 2 months ago, the Internal Revenue Service set up an exact, identical program for banks, payers of interest, for verifying payees' Social Security numbers when they provide it at the bank. Before the bank provides any information to the IRS, the bank gets back an electronic verification from IRS that this is a taxpayer number, Social Security number. There is no objection, no political objection that we are aware of that was raised to that when it was done, and yet we find today that we are issuing Social Security cards and numbers to children 2 and under, and in the census—the Postal Service is now going to be sharing information with the Census Bureau to provide all kinds of data to the Census Bureau to provide the 2000 census and the American Civil Liberties Union raised no political objections. In fact, they affirmatively supported it.

So if we set aside the political objections and—I recognize that there are no technological obstacles to introducing these technologies and that most of the political objections are based on political bias, I think we could move forward much more aggressively getting in place a system which all employees would be—have to use at the time of hire to make employer sanctions effective.

One thing that the Commission did not do which we believe is very important, Mr. Chairman, is that they did not provide us with model State language for each State legislature to pass. If you are not going to have State employer sanctions, if we are not going to have the removal of Federal preemption, we at least need to have some kind of model State language for the States to pass to bring their data bases, their birth and death registries, their vital information branches into compliance with some national standards.

As I say, the Commission recommendations on birth certificates and death certificates are far more important in the long run to the resolution of this issue than the question of whether or not we have a document or a Federal registry right now. These are the supremely important things this Commission has found for us that need to be done.

And so, you know, we would like to point out that there are a number of bills now pending in Congress. In addition to yourself, there is one that Senator Reid has enacted, S. 1923, Congressman Bilbray, 3320, Congressman Archer, 4934, and Congressman Lamar Smith, 3860, all of these call for the development of not only a foolproof work verification document, such as the Social Security card, but also a national birth-death registry. So we would urge those bills and commend them to your attention, Mr. Chairman.

With that, I think I can refer you to my prepared statement for the specific recommendations, and I would be happy to take questions.

Mr. MAZZOLI. Thank you very much. I appreciate your testimony.
[The prepared statement of Mr. Stein follows:]

TESTIMONY OF

DAN STEIN

EXECUTIVE DIRECTOR

FEDERATION FOR AMERICAN IMMIGRATION REFORM

Before the

Subcommittee on International Law, Immigration and Refugees
Committee on the Judiciary
U.S. House of Representatives

September 29, 1994

Mr. Chairman, and members of the subcommittee, thank you for the opportunity to appear on behalf of the Federation for American Immigration Reform (FAIR). My name is Dan Stein and I am the Executive Director of FAIR. FAIR is a national non-profit membership organization, working to end illegal immigration and set legal immigration to a level consistent with long-term national population stabilization and the national need. FAIR now supports a moratorium on immigration.

I would like to take this opportunity to thank you Mr. Chairman for your leadership over the years on the issue of immigration reform. You have made valuable contributions towards reforming our immigration system. In fact, without your leadership and perseverance, employer sanctions, the first step towards responding to the American people's desire to bring our borders under control, would not have become a reality in 1986. Your leadership will be missed.

My testimony today concerns the need for a long-overdue secure uniform work verification system in order that the employer sanctions law, Immigration Reform and Control Act, P.L. 99-603 (1986), can be fully and effectively enforced. FAIR, expressing the view of the overwhelming majority of the American people, has long called for the establishment of a secure work verification system. Congressional leaders from both parties have included provisions for the establishment of a secure system as a key element in their comprehensive immigration reform bills. Barbara Jordan and the Commission of Immigration Reform recently recommended the establishment of a five

state pilot program to verify worker eligibility. It is now widely recognized that without a verification system we will never be able to solve our ever increasing illegal immigration problem.

World Population Pressures on the United States

If the grass is always greener on the other side, then a quick glance at our daily newspapers tells us that for an awful lot of people worldwide, the grass they covet grows in the United States. Never before in the history of this nation have so many people wanted to move here. Never before have we faced a greater challenge in trying to regulate the force of millions pressing at our national borders.

We are truly at a watershed today. Americans are beginning to wake up to this fact. The out-migration from Cuba, Haiti, the Dominican Republic and Mexico reveal that we are at the headstreams of what could be a chronic stage of unmanaged immigration for the next forty years. Before us lie stark choices that are now within our power to decide. Soon they may not be. The international demographic forces are strong and powerful. They are perhaps the strongest external forces this nation has ever faced. If we hope to control them, we must choose soon, or it will be too late.

The patterns of regional population growth -- and the dynamics of that growth -- will generate the most unregulated flow of migrants in the history of the human race. This acute pressure can only grow in intensity. Any loophole in our immigration

process, and opportunity for exploitation or illegal border crossing will produce uncontrolled waves of in-migrants. This is something we must control now.

Immigration Reform and Control Act of 1986

Illegal immigration is a serious problem in the United States. Last year alone 1.3 million illegal aliens were apprehended at the borders of this country. The Immigration and Naturalization Service (INS) estimates that for every one illegal alien the Border Patrol apprehends, another two or three cross the border. (This figure, however, is the low estimate; the INS high estimate is that for every one illegal alien apprehended, five to seven cross the border). Currently, there are approximately 5.1 million illegal aliens residing in the United States. The majority of these illegal immigrants have come to the U.S. for jobs. Added to this problem is the number of people who overstay their non-immigrant visas in order to live and work in the U.S. permanently. In fact, the INS admits that more than 50% of the aliens who illegally work in the U.S. originally came here as legal entrants and then violated their temporary status by overstaying their time limit and working.

Until 1986, there was no specific ban on the knowing employment of ineligible aliens. That loophole was a powerful invitation to the unemployed in other countries to illegally enter the United States.

The Immigration Reform and Control Act of 1986 made hiring an illegal alien

against the law. IRCA's employer sanctions imposed an escalating series of civil and, under certain circumstances, criminal penalties against those who knowingly hired illegal workers. In order to protect both the persons subject to penalties and the members of minority groups legally in this country, IRCA provided a system to verify that employees and potential employees are eligible to work in the U.S. Currently, to prove identity to an employer, an individual may submit any of 29 kinds of documents, including a driver's license or a voter registration card.¹ To prove employment eligibility, any of 17 documents, such as a Social Security card or birth certificate, are specifically authorized under the law. (Typically, the documents used are a driver's license for identity and a Social Security card for eligibility). To comply with the law, the employer must certify that he/she reviewed the documents and the "they appear genuine" and relate to the applicant.

Initially, the new law was taken seriously and the message that illegal workers would be deterred spread quickly to other lands. Illegal crossings plummeted the first three years as foreigners realized that the primary incentive to violate U.S. immigration laws -- U.S. jobs -- had been eliminated.

¹Doris Meissner testified before this committee on September 21, 1994, that the INS is planning to scale back the number of documents. However, the plan will not be implemented until at least the summer of 1995, and will include at least 16 documents.

By 1989, because the U.S. lacked a uniformed, secure ID, a thriving cottage industry in phony documents had developed that illegal aliens used to skirt the new law. A recent 60 Minutes episode documented how easily, and cheaply, a person can obtain a forged Social Security card to be used in gaining illegal employment. In fact, a Department of Justice and INS March 1992 report, Immigration Reform and Control Act: Report on Legalized Population stated that 83% of the aliens amnestied under the 1990 Immigration Reform Act had a false Social Security cards. The message that phony documents are easy to obtain and can be used to work illegally in the U.S. quickly reached other lands, and illegal crossings have again reached overwhelming numbers.

Solutions for Reform: Fulfilling IRCA's Mandates

On June 16, 1993, I testified before this committee in regards to the problems of the employment verification system. In short, I testified that, **the employer sanctions system now in place is incomplete and therefore not as effective as it must be.** Many studies have been conducted concerning the shortcomings of the employment verification system and the provisions needed to fix the program including specifically and most importantly a secure work authorization system, including a tamper-proof work authorization bolstered by a telephonic and electronic verification system. These are the type of solutions that must be implemented immediately if we are ever going to be able to bring illegal immigration under control. As most people agree that the

employer sanctions program is in need of reform, I would like to focus my testimony on the type of reform needed.

The General Accounting Office (GAO), in its three annual reports mandated by IRCA, confirmed that IRCA has reduced illegal immigration. The GAO's third report, "Employer Sanctions and the Question of Discrimination," released in March 1990, found that IRCA was not a burden on the nation's employers and recommended that employer sanctions be retained and strengthened. Although the report indicated that a small amount of unlawful discrimination against workers occurred, the GAO was unable to determine whether any of the discrimination they uncovered was against eligible workers, or against ineligible illegal workers.

However, it was clear from the third report that nearly all the cases of alleged discrimination had resulted from employer confusion about the types of documentation they could accept as proof of work eligibility. Thus, a uniform system, which IRCA's drafters advocated and provided for in 1986, combined with employer sanctions and increased manpower along the border, would both significantly reduce the flow of illegal aliens into the United States and insure against potential sanctions-related discrimination.

In its March 1990, report the GAO recommended a "fundamental reform" of the current verification system which could be accomplished simply by

complying with IRCA's provisions. The report noted that the provisions of Section 101(a)(1) of IRCA, which specifies that any improvement to the verification system should yield reliable determinations of employment eligibility and identity, be counterfeit-resistant, be used for employment verification only, protect individual privacy, and not be used for law enforcement purposes unrelated to IRCA, "are consistent with the types of changes we believe are necessary to the verification system to reduce discrimination. Increased reliability would make it easier for employers to comply with the law. A counterfeit-resistant ID would increase employer confidence that documents being presented were genuine. Privacy guarantees and prohibitions against using the employment verification system for other uses would reduce fears among both employers and prospective employees of unjustified government intrusion into their lives. Thus, when combined with fewer work eligibility documents and universal application throughout the work-force, such improvements to the verification system should both reduce discrimination and increase the effectiveness of sanctions." (General Accounting Office, "Employer Sanctions and the Question of Discrimination" (1990)).

There is a great deal of public support for a uniform, secure work verification system. In polls conducted in June 1990, and April 1991, by the Roper Organization, concerning "American Attitudes Toward immigration," over 60% of those questioned stated that they favored a government issued, forge-proof, easily verifiable identification document that would have to be shown only when applying for a job. Support is

stronger today.

Employer sanctions will never be as effective as they were meant to be until all of IRCA's provisions are fully implemented, specifically an immediate verification process and a secure work authorization.

Telephone Verification Process

A telephone verification system must be implemented. It is the first step in enabling employers to verify the social security number presented to them by potential employees.

IRCA provided authorization for the President to request the Attorney General to test telephone verification as an alternative to physically presenting document to employers during hiring transactions. Patterned after credit card systems, it would enable employers to transmit electronically a number, perhaps the social security number, to receive verification of work eligibility.

The Social Security Administration conducted a pilot project to test the feasibility of a telephone verification system for the use of employers. Participation in the project, begun January 20, 1987, was voluntary and available to about 70,000 employers in Dallas, El Paso and Corpus Christi areas. By the end of the year, employers made about 13,500 calls to verify 23,158 social security numbers of prospective employees.

The SSA was able to verify 81% of the numbers provided for verification. A name mismatch was the primary reason numbers could not be verified. Other reasons included: the date of birth differed, the number provided was invalid, or the individual was not authorized to work.

Although successful where it was conducted, it is not clear whether this pilot program can accurately project the results of a national verification project because it was limited in several ways: it was voluntary; the three cities selected were in an area with a large illegal alien population which could skew the results of verifications attempted; and the employers' calls were handled manually, rather than with an automated system.

Nevertheless, the GAO, in its March 1988 report entitled "A New Role for the Social Security Card," concluded that the project is important because it "provided some assurance to employers that the Social Security card presented by prospective employees was valid and the individual presenting it was the owner. This verification could reduce the number of individuals using fraudulent cards with invalid numbers, non-work or restricted Social Security cards, and cards belonging to children or other persons where the age entered differs significantly from that of the bearer of the card."

Barbara Jordan, Chair of the Commission on Immigration Reform, stated in testimony on August 3, 1994, before the Senate Subcommittee on Immigration and

Refugee Affairs that the "Commission believes that the most promising option for more secure, non-discriminatory verification is a computerized registry, using data provided by the Social Security Administration and the Immigration and Naturalization Service." The key to which is the social security number. All workers must have a number before accepting work. FAIR agrees with the Commissioner that only one document, probably a variant of the current Social Security Card, should be used to prove worker eligibility.

Of course, implementation of a credible verification technology, either telephonic or electronic would require the INS to upgrade dramatically the attention and professionalism accorded its record-keeping systems. Records responsibilities have been chronically neglected by the agency, and records security is often haphazard. A 1989 audit showed about 17% of the data from its central alien information repository to be missing or incorrect.

Dr. Jordan testified that, "This verification system will reduce the time, resources, and paperwork spent by employers in abiding by the requirements of immigration law." It will also reduce any potential for discrimination. Employers would no longer have any reason to ask if a worker is a citizen or an immigrant -- the only relevant question is: what is your social security number since all people will have only one document to show. The technology and the public consensus exists, we must now find the will to implement the needed verification system.

Electronic Social Security Number Verification Now Done by IRS

Mr. Chairman, I would like to note that where the issue is of less importance to the opponents of immigration controls, and where a Federal agency is highly motivated, electronic verification of similar information is proceeding aggressively.

A pilot program for electronic verification of Social Security Numbers is now being undertaken by the Internal Revenue Service. This program, announced in Rev.-Proc. 94-24, sets up an electronic verification of the Social Security Number (or other Taxpayer Identification Number) provided by payors (banks and other payors of interest) to the IRS. If the payor reports an erroneous number (inconsistent with that provided by the payee on tax returns), the IRS informs the payor who, in turn, contacts the payee for the correct number. A test group of 200 payors has been given direct access to IRS computers to do preliminary electronic verification of numbers before formal reports are filed with IRS.

I also note that a principal opponent of this verification system (or any work verification document) is the American Civil Liberties Union -- an organization that recently stated that it supported the use of Postal Service Address Lists by the Census Bureau to perform the 2000 Census. Apparently, where the interest is supported by these political players, interagency data sharing and accumulation is accepted as an "essential agency function." (See, Testimony of Laura Murphy Lee, Director, ACLU, Washington National Office, July 21, 1994, before the Subcommittee on Census,

Statistics, and Postal Personnel, Committee on Post Office and Civil Service, House of Representatives.)

A Forge-proof Social Security Card

The Social Security Card must be made forge-proof. Such a card should be the only document required to prove worker eligibility rather than the multitude of documents that are now allowed.

Under IRCA, the nation's estimated 7 million employers are required to review a variety of documents allowed as evidence of identity and employment eligibility. Most employers, however, are not in a position to make sound judgments on the genuineness of these documents. Indeed, employers have been given little guidance and education on the characteristics of fraudulent and genuine documents. Moreover, even SSA employees, who are trained in document authentication, often have difficulty determining whether documents are authentic and relate to the person presenting them.

Today, the Social Security number has a wide variety of uses, for example, as an identifying number on drivers' licenses in at least 29 states, tax returns, and as ID numbers on many college campuses. As of 1991, 330 million numbers had been issued, 210 million of which are considered active. There are 16 versions of the card in use. Until 1972, the SSA issued cards without requiring evidence of identity, age, or

citizenship. Now, however, such evidence is required, and birth certificates are commonly accepted in support of an application for a card.

To improve employer verification under IRCA, the Social Security card should be designated as the only authorized employment eligibility document. Such an option should have minimal adverse impact on the public: The IRS already requires that all employees and U.S. citizens age 2 or older have a Social Security number for tax purposes.

The GAO supports the use of the Social Security card as the single document that should be used as evidence of employment eligibility under IRCA. In a March 1988 report, the GAO states that, "We believe that the [Social Security] card would meet the needs of both employers and employees and offer advantages over the present system. With such a change employers would have only the [Social Security] card with which to become familiar, rather than the thousands of different birth certificates and other documents that now can be provided as evidence of employment eligibility. Also, educating employers in detecting fraudulent cards would be more feasible than trying to educate them on the many types of documents now authorized." (General Accounting Office, "A New Role for the Social Security Card" (1988)).

Currently a number of law-makers have recognized the immediate need to reform our antiquated document system and have included in their comprehensive immigration reform bills, a plan to strengthen employer sanctions through a secure Social Security card and verification system. These Congressional leaders include, Senator Reid, (D-NV), in S. 1923 the Immigration and Stabilization Act, Congressman Bilbray (D-NV), in H.R. 3320, the Immigration Stabilization Act, Congressman Archer (R-TX) in H.R. 4934, the Immigration Reduction Act and Congressman Lamar Smith (R-TX) in H.R. 3860, the Illegal Immigration Control Act. These bills provide for the issuance of improved social security cards to citizens and permanent resident aliens and improved alien identification cards to other aliens. The cards are to be machine-readable and resistant to tampering and counterfeiting. In addition, the bills would establish a telephone verification system by which a prospective employee's eligibility for employment can be promptly and reliably confirmed. Because the validity of a Social Security card depends upon the validity of the documents presented by the applicant to demonstrate citizenship, these bills, except for H.R. 3860, provide for a uniform national network of state vital statistics.

Costs and Privacy Concerns

Many critics of a secure uniform work verification system claim that it would be too costly and that it would pose a threat to privacy. I will examine the credibility of each of these arguments in turn.

Today, almost everyone agrees that illegal immigration places a huge burden on local, state and federal government agencies' resources. Since 1986, the GAO has conducted several studies on the adverse effects of illegal immigration. The GAO found substantial evidence that illegal aliens displace (take jobs away from) legal workers. The result of this of course is increased worker dependency on federal unemployment and welfare benefits. In fact, the Congressional Budget Office (CBO) estimates that each unemployed person in the United States receives an average of about \$7000 per year in these benefits. If the number of illegal aliens in this country today is estimated at 5 million and if even 1% hold jobs which unemployed Americans might take, then the savings would be \$350 million per year, if the displacement is 2%, the figure would be \$700 million per year, etc. Actual displacement is probably substantially higher.

Currently a number of the highest impacted states are suing the federal government for reimbursement for the billions of dollars in costs associated with illegal immigration, including health care, education, and crime prevention. The California State Department of Health Services estimated that the state paid \$1 billion in emergency and pregnancy-related services for illegal aliens in 1993. Florida's Governor's Office reports that in 1993, the state spent \$180.4 million on education for the children of illegal aliens.

How do these costs compare to those involved in establishing a secure uniform work authorization system? The SSA has estimated that the cost of replacing all Social Security cards with a tamper and counterfeit-resistant version would be \$108 million a year for 10 years. The actual cost of this option should be lower since replacement of all cards would not be necessary. People over the age of 65 would not need new cards. In fact, most people with jobs would not receive new cards until they decide to change jobs. (The GAO has suggested that an option for financing the cost of replacement Social Security cards would be to charge a fee for all or certain replacements.) The Department of Labor has estimated the cost of a verification system utilizing telephone calls to a government data bank as averaging \$333 million per year for the first 5 years and about \$200 million per year thereafter. Doubling the number of interior INS investigators would add \$25 - \$30 million per year. Employers could be charged a small fee (perhaps \$2.00 per verification call) in order to off-set initial costs. **Thus, a new system to verify work eligibility clearly will not exceed in cost the amount directly saved as a result of reduced public assistance alone, not even considering the value of the other benefits of reducing illegal immigration.**

Regarding well-known civil liberties concerns, it is clear that no likely future uniform work verification system would require personal data that is not already furnished by law and available in other government data banks.

In most cases, opposition to the use of the Social Security number appears to arise from a fear that, if several organizations possess an individual's number, the ability with which these organizations can exchange information about the individual will be greatly facilitated. Some are concerned that if the Social Security number is used to expedite unconstrained exchanges of information about people, dossiers about individuals -- in some cases including less than flattering information -- may be created that will follow them throughout life.

Of course, any secure uniform work verification system would be bound by the provisions of Section 3 of the Privacy Act of 1974 (P.L. 93-579). Section 3, codified at 5 U.S.C. 552a (1974), addresses the concerns raised by opponents of a secure uniform work verification system. The statute is very explicit regarding the conditions under which a record may be disclosed, the kind and extent of information a federal agency may maintain in its records, and the ability of an individual to gain access to his record. Section 3 provides that a governmental agency cannot disclose any record which is contained in a system of records to any person or entity outside the agency without the written consent of the individual to whom the record pertains. It further provides that an agency is to maintain in its records only such information about an individual as is relevant and necessary to accomplish a statutorily required purpose of the agency. And, Section 3 guarantees that any individual can gain access to his record or to any information pertaining to him which is contained in the system.

Additionally, IRCA itself contains specific safeguards intended to minimize the risk of undue invasion of privacy and the risk of government abuse in connection with a secure uniform work verification system: (1) Personal information utilized by the system would not lawfully be available to government agencies, employers, and other persons except to the extent necessary for the purpose of verifying work eligibility.

(2) A withholding of verification would not be lawful, except on the basis that the employee or prospective employee had failed to show that he was a United States citizen, an alien lawfully employed by the immigration law or the attorney general. (3) The system would not lawfully be available for law enforcement, except to enforce the immigration laws or several statutory provisions relating to false or fraudulent statements or documents. (4) If the system required individuals to present a card or other document, then such document could not lawfully be required to be presented for any purpose other than verification of employment eligibility or the enforcement of several statutory provisions relating to false or fraudulent statements or documents, and could not lawfully be required to be carried on the person.

In any event, a secure uniform work verification system would bear no resemblance to one which utilizes a national identification card with all of its alleged Orwellian implications. Some of those who insist on linking the two concepts perhaps do so for the purpose of chilling the debate on the subject. Almost without exception, these naysayers are the very same ones who opposed the employer sanctions provisions of IRCA to begin with, and who continue to seek sanctions repeal. They

have a method to their madness, of course: Although there is clear evidence that employer sanctions are working, they will never realize the true level of their effectiveness without the support of uniform, fraud-proof work verification system.

Other Voices

Other commissions have been speaking out on the problems in the current employer verification system and the need to strengthen it with a secure work authorization. These other voices include:

a. Trilateral Commission Report. A recent report of the Trilateral Commission commented that "the central flaw in the [employer] sanctions scheme that was enacted is the absence of requirements for secure identity documents.... Without a universal identification document, which does not exist in the United States, the law allows a wide range of documents to be used to meet the verification requirement. Most of the permissible documents can be readily counterfeited, and the use of fraudulent documents is, therefore, widespread. Thus, the ability of the United States to control illegal immigration turns to an important extent on the seemingly remote, esoteric issue of identity documents." March 1993.

b. Agricultural Commission Report. In its 1992 final report, the bipartisan Commission on Agricultural Workers found that a secure work authorization document, along with better enforcement of border controls, would help halt the flow of illegal immigrants into the farm labor force. The Commission found that continued high illegal

immigration of farm workers has bloated the labor supply, leaving workers with little bargaining power to improve wages and working conditions.

FAIR's Recommendations:

This nation has the means to effectively enforce employer sanctions in a nondiscriminatory fashion, on a practical and cost-effective basis, and without undue intrusion into the lives of citizens and legal immigrants. Moreover, Congress mandated that the federal agencies charged with enforcement of IRCA aggressively evaluate and adapt existing technologies to carry out their responsibilities under the law.

The Commission on Immigration Reform has recommended that the President immediately initiate a program to implement their proposed verification process in the five highest impacted states. Their system would include, verification of the potential employee's social security number; protection against the use of the verification process for purposes other than those specified by law; and the system would protect the privacy of the information in the registry. The actual pilot program would test a variety of methods for verification to determine what is most cost-effective, fraud-resistant, and non-discriminating method.

We agree that a verification system should be initiated immediately. Our only concern with this pilot program, is that there is no stated time limit for the how long this will remain for temporary and there are no plans as of yet detailing how and when it will

become a national program.

FAIR recommends that a national worker verification system be initiated immediately using the social security card and a telephonic verification system complemented with a national birth/death registry as the most effective method of ending the illegal hiring of unauthorized workers.

The following are a series of recommendations that could be implemented over the next three to five years, relying on existing technology, to ensure full nondiscriminatory compliance with IRCA.

- To ensure that the law is applied in a nondiscriminatory manner, FAIR recommends that the verification procedure be applied to every job applicant regardless of citizenship status.
- A secure and universal verification system should be established. A secure and nondiscriminatory identification system could be established using existing, affordable technology and data already available. Such a system should utilize the SSA NUMIDENT data base in conjunction with the INS Central Index System.
- Current uses of the Social Security number (SSN) make it easily suited for this purpose. A valid SSN is already required to be employed in the

United States and can easily be verified through the use of existing, affordable technology. The data in each Social Security file contains sufficient information to determine whether the individual using the number is the person to whom it was issued and whether that individual is eligible to be employed. Employers could ask job applicants a few random, multiple-choice questions, generated by the system and based on information in the record. This, along with a tracking system for multiple use of numbers, would eliminate most abuses.

- The necessary technology is already in employers' hands. Verification requires nothing more than a touch tone telephone or a "point of sale device" already in use for credit card verification by millions of retail stores. The verification process, like the credit card verification, could be accomplished in a matter of seconds at a nominal cost. The INS has already conducted a feasibility study and found it to be workable and cost-effective. In fact, the systems and software developed to implement the Systematic Alien Verification System (SAVE) program, which verifies alien eligibility for federal assistance programs, can easily be adapted to verify work eligibility.
- Verification would be based on the data already in Social Security files. No physical documentation of any kind would be required. The

verification process would rely on confirmation of data, not inspection of documents by a nonexpert. Therefore, there would be little possibility of document fraud.

- The verification code would be proof of compliance. Like the verification code issued to merchants by credit card companies, a verification code issued by the INS would serve as proof of an employer's compliance with the law.
- A telephone verification system would be cost-effective for the employer. The use of a telephone call-in or point of sale device verification system would eliminate the need for extensive paper work and costly record-keeping. All that would be needed is the inclusion of the INS verification code on an employee's job application form.
- Secure issuance of new fraud-proof SSNs is necessary. Tax laws mandate that every individual over the age of two have a Social Security number. Thus, all new applications for SSN 's by an adult must be made by immigrants. New applications by adults should be cross-checked by INS, and INS should be able to make electronic notations on the verification file that pertain to changes in the alien's work status.

- The state should be required to provide death notification to the Social Security Administration. Each state should be required to include the SSN of the deceased on death certificates and provide that information to the SSA within 30 days after death. Invalidation of SSN 's would prevent further use of that number for fraudulent purposes.
- In the long run, a national birth/death registry should be established as the basis of an integrated Federal citizenship index and registry. There are compelling reasons why Americans will soon need to be able to verify quickly their status as U.S. Citizens - for accelerated international inspections, national health care systems, gun reform, voter registration and proof of entitlement eligibility. The sooner we begin studying available options, the better.

It is clear that eight years after their institution, the employer sanctions provisions of IRCA are generally effective and enforceable. It is equally clear that whatever flaws exist in the enforcement of sanctions are due to the failure to adhere to the recommendations contained in the law itself regarding the establishment of a secure, effective uniform work verification system. By carrying out the law's mandates through the use of existing technology, employer sanctions can effectively do what they were intended to do — protect American jobs for American workers and ensure that every individual who has the legal right to work in the United States can compete for a job without fear of discrimination.

Aug 14, 1992

Social Security: Trust but Verify

By Dan Steln

IT WAS AS predictable as the sun rising in the east. No sooner had Barbara Jordan, head of the Commission on Immigration Reform, recommended a pilot program to test a verifiable Social Security card than the four mungers leaped into action. The usual buzz words and phrases designed to strike fear into the hearts of various groups of Americans, flew in all directions.

Jordan, like just about everyone else who has looked for a way to control illegal immigration, has come to the conclusion that we cannot prevent illegal aliens from coming here to work without some means of identifying who is in this country legally and who isn't. Nevertheless, cries of Big Brother and claims that a verifiable Social Security card would lead to discrimination against minorities were heard almost immediately.

Before anyone gets too carried away about government encroaching on our lives, let's put things in perspective. Less than a week after Jordan issued her statement, a congressional group known as the Bipartisan Commission on Entitlement and Tax Reform predicted that entitlement programs will consume nearly all federal tax revenues by 2012. In a society where we have, or want, a government program to deal with just about every problem, it is absurd to suggest that having a verifiable Social Security card will turn the government into Big Brother. Moreover, if the government were inclined to abuse our civil liberties, it could do so already. A card with a magnetic strip on the back will not make one bit of difference

It is even more absurd for anyone to believe that the United States can maintain a generous social safety net and preserve a high-wage economy without some means of ensuring that only legal residents of this country can work and collect benefits here. Since the average American now carries a driver's license, several credit cards, ATM cards and leaves electronic fingerprints all over town, isn't it time to improve the integrity of America's birth records and make the Social Security card

secure? Merchants don't just run a check on some people's credit cards. They sweep everyone's card through the same device and within seconds they know whether the card is valid, whether the customer has a credit line or if the card has been reported lost or stolen.

Discrimination is a problem as old as the human race, and a verifiable Social Security card is not going to change that. We have civil rights laws under which we can and should penalize

employers who deliberately discriminate against workers based on race, ethnicity or religion. A verifiable work document, however, might actually prevent inadvertent discrimination. No longer will an employer have to make a judgment call about

the validity of a job applicant's documents. He will know in a matter of seconds if the person standing before him is legally entitled to work here. Big Brother and the fear of discrimination are nothing more than red herrings. What the opponents of the Commission on Immigration Reform's proposal are really afraid of is that a verifiable Social Security card might actually be successful in controlling illegal immigration. These are the same people who have cried wolf at every other proposal to control this problem.

Americans need to face reality. If we want to remain a high-wage economy, if we hope to preserve some sort of social safety net, if we wish to avoid disastrous overpopulation, then we must protect what is important to us. Instituting an effective means of distinguishing those who have a right to be in the United States from those who do not is a small and unavoidable price to pay.

'If the government were inclined to abuse our civil liberties, it could do so already. A card with a magnetic strip on the back will not make one bit of difference.'

fraud-proof? Membership cards from a video rental shop have more safeguards built into them than do our vital national records and documents.

The United States today maintains citizenship on the honor system, and millions of people around the world know it and are prepared to take advantage of that weakness. Americans accept that contemporary life must come with some trade-offs. The romanticized concept of absolute privacy, if it ever really existed, went out with government assistance programs, credit ratings and machines that spit out bits of tin wall.

There is also no reason to believe that having the ability to verify whether a prospective employee is a legal resident of the United States will lead to discrimination against minorities. Any system will be universal. Everyone seeking a job, regardless of race, ethnicity or any other characteristic, will be subject to exactly the same verification pro-



Dan Steln heads FAIR, the Federation for American Immigration Reform

Mr. MAZZOLI. Professor Vaughns.

**STATEMENT OF KATHERINE L. VAUGHNS, PROFESSOR OF
LAW, UNIVERSITY OF MARYLAND**

Ms. VAUGHNS. Good afternoon. I must say I am quite surprised and shocked to hear of your retirement from this subcommittee. All the time that I have been a professor in academe, your name has been associated, has been synonymous with immigration reform and policies. But I wish you well.

Mr. MAZZOLI. Well, you have graced this panel many times in the past and we hope that that will not come to an end because I might move on.

But once again, it has been a subject that has occupied me I think since 1981, actually part of 1980, even before I became chairman, was active in the last phase of the Hesburgh panel, that Commission. So it has been the better part of 14, 15 years. And it has become a subject that I have found very interesting, and also a subject that I have used—been able to use in a sense when I am talking to people or particularly addressing classes of students in framing a lot of issues. And so I think that is why this has become such a very important subject for everyone, and for people of the stature of Professor Jordan and our former colleague, Barbara Jordan, it puts it in a different setting. And that is why I think that that report is going to be a very big aspect of the debate for a lot of time to come.

Ms. VAUGHNS. As you know, after many years of debate, Congress enacted employer sanctions as part of a major immigration reform measure designed to curb the flow of illegal immigration. In doing so, Congress made the knowing employment of unauthorized aliens illegal. Notwithstanding the controversy surrounding this particular measure, implementation of the employer sanctions law finally eliminated a legal asymmetry that had existed in immigration law since the enactment of the Immigration and Nationality Act in 1952.

As an academic professional, somewhat removed from the real world of immigration practice, I may lack a concrete appreciation for just how ineffective the current regime of employer sanctions really is. Nonetheless, it has been difficult, if not disingenuous on my part, to explain to my students that although it was unlawful to enter the United States without proper documentation or to work in the United States without proper documentation, nonetheless, employers who employed unauthorized aliens were not penalized in any form or fashion for doing so. So, although enforcement of employer sanctions remains problematic indeed, eliminating a provision that allowed the exploitation of a subclass of individuals without the fear of any legal repercussions makes for a much more credible immigration policy.

Unfortunately, in the wake of IRCA's passage, when employer sanctions were finally implemented in 1988, the technology in fraudulent and counterfeit documentation was such that it permitted the new law to be totally frustrated, if not virtually undermined in its entirety.

For example, I read somewhere recently, I think it was U.S. News & World Report, that an INS study reported that nearly 83

percent of undocumented workers possessed fraudulent Social Security cards. Thus, it seems futile to talk about any other measures designed to strengthen the employer sanctions unless a concerted effort is made, whether it be legislatively or administratively, to ensure a secure employment verification system.

Because of concerns about establishing a national identification card, efforts toward achieving such security in the verification process will likewise be controversial. However, as the States work, through modern technology, to achieve a more tamper-resistant driver's license.

For example, I recently experienced that, I lost my driver's license, which was really only renewed less than a year ago, and now they are double prints of my picture and watermarks or whatever. It is all fancy. I am quite impressed, and I must confess that I am way out of my area of expertise when we start talking about the ability to develop secure, tamper-resistant documentation. That seems to be where the focus should be in terms of Federal reform efforts.

Meanwhile, as I read the literature concerning the underground economy that exists where employers violate labor laws and standards with impunity, efforts to more vigorously enforce such labor laws may serve the national immigration policy as well, coupled with the increased border enforcement efforts and the agency coordinated efforts that were talked about earlier today.

Also, there is a possibility that increasing the amount of civil fines imposed against employers who violate employer sanctions laws may cause such employers to think twice before risking discovery as a cost of doing business. In addition, Congress may wish to consider adopting harsher penalties for producing fraudulent documents.

Because I believe that reform efforts at this time should focus on developing a secure employment verification system, I caution against looking outside the Federal Government insofar as enforcement efforts are concerned. I say this in large part because the employer sanctions regime is still relatively new. As stated in relevant literature on the subject, new employment standards take at least a decade before there is a transformation in the workplace behavior, conditions, and practices. In other words, it is simply too early to do such things as lift the Federal preemption bar or create private rights of actions.

As to the former, it is my impression that States that had employer sanctions programs did not vigorously enforce them in the first place, and it seems to me Federal courts already have their hands full with ever-increasing new causes of action as well as new Federal crimes that Congress has recently created.

Unless these measures can measurably enhance enforcement efforts, then they should be tabled for the time being. Moreover, until something is done about the ready availability of concrete counterfeit documents, many such efforts will unlikely not produce any measurable results. Thank you.

Mr. MAZZOLI. Thank you very much, Professor. I appreciate all of the testimony.

[The prepared statement of Ms. Vaughns follows:]

PREPARED STATEMENT OF KATHERINE L. VAUGHNS¹

I. INTRODUCTION

This statement is submitted in connection with the hearing on H.R. 3362, the "Employer Sanctions Improvement Act," scheduled before the Subcommittee on International Law, Immigration, and Refugees of the House of Representatives Committee on the Judiciary.

H.R. 3362 aims to strengthen the employer sanctions law and thereby enhance the effectiveness of its enforcement by governmental agencies. Efforts to correct the weaknesses in the employer sanctions law and to improve its enforcement capabilities are important undertakings. What is not clear, however, is whether the specific reform measures set forth in this bill will accomplish the intended results at this particular juncture.

II. OVERVIEW

After many years of debate, Congress enacted the Immigration Reform and Control Act of 1986 ("IRCA") which provided for employer sanctions as part of a comprehensive statutory scheme to deter illegal immigration. This legislation, for the first time, made the employment of undocumented aliens unlawful. In so doing, IRCA eliminated an intolerable asymmetry that had existed in immigration law prior to its passage. Notwithstanding the legitimate concerns about employment discrimination based on nation origin, the employer sanctions law is a necessary deterrent which aims to avoid the creation of an exploitable "sub-class" of individuals who work for employers who take advantage of their undocumented status without fear of any legal repercussions. As once stated, "[c]onditions that tolerate or reproduce illegal status, for whatever reasons, contradict elemental commitments to civil and human rights."² Unfortunately, since IRCA's passage, "a booming market in false documentation" has arisen to accommodate yet another exploitable sub-class of undocumented workers.³

¹ Associate Professor of Law, University of Maryland School of Law. B.A., 1967, J.D., 1970, University of California at Berkeley.

² Robert L. Bach and Doris Meissner, EMPLOYMENT AND IMMIGRATION REFORM: *Employer Sanctions Four Years Later* 4 (1990).

³ Lora Jo Foo, *The Informal Economy: The Vulnerable and Exploitable Immigrant Workforce and the Need for Strengthening Worker Protective Legislation*, 103 Yale L. J. 2179, 2182-2183 (1994) (arguing that states should strengthen labor laws which employers in the underground economy violate with impunity and stiffen penalties to eliminate the profitability of violating such laws). Also, a study published in 1990 examining employer sanctions violations reported that the legislative and implementation processes produced a

At the present time, the single most important obstacle to the implementation and effectiveness of the employer sanctions law is the easy access to credible counterfeit documents. Given the present statutory scheme, employers can avoid sanctions by asserting a "good faith" defense to the employment of undocumented aliens who present fraudulent documents so long as they appear genuine on their face.⁴ And if the employer undertakes to question or verify the legitimacy of such documents which are not obviously fraudulent, the employer may be in violation of the law's anti-discrimination provisions.⁵ Concern already exists, as a result of the GAO's recent studies, that confusion associated with the verification procedures may be contributing to prohibited employment discrimination under IRCA.⁶ Simplifying the procedures and improving the employment verification system should, therefore, be the major focus of any reform efforts undertaken at this time.⁷

III. THE LEGISLATIVE PROPOSAL

In an era of limited resources, it is tempting to maximize enforcement opportunities by extending to others the opportunity to exact compliance with federal mandates. H.R. 3362 does this, in relevant part, by (1) proposing the elimination of the federal preemption provision, (2) permitting the filing of private civil actions, and, indirectly, (3) imposing civil sanctions on unauthorized aliens.

low-risk white collar crime. Kitty Calavita, *Employer Sanctions Violations: Toward A Dialectical Model of White-Collar Crime*, 24 Law & Society Rev. 1041 (1990).

⁴ See, e.g., Kitty Calavita, *The Contradictions of Immigration Lawmaking: The Immigration Reform and Control Act of 1986*, 11 Law & Policy 17, 29 (1989) (observing that false documentation allows employers to comply with the letter of the law but not the spirit).

⁵ See DAVID A. MARTIN, MAJOR ISSUES IN IMMIGRATION LAW 113 (1987) (noting the inherent tension between the need for a secure employment verification system and the perceived risk of discriminatory application which led to the statutory mandate that documentation be accepted if it "reasonably appears on its face to be genuine.").

⁶ UNITED STATES GENERAL ACCOUNTING OFFICE, IMMIGRATION REFORM: *Employer Sanctions and the Question of Discrimination* 60-70 (1990).

⁷ I am, therefore, in support of the proposals set forth in section 105 of Title I and the essential goals articulated in the sections under Title II, with the caveat that I would defer to the agency's judgment, given its history and experience with the employment verification system, concerning the elimination of appropriate documents.

IRCA was not fully implemented until 1988. The federal agencies, therefore, should be given more time to work out the weaknesses in the implementation and enforcement processes. More important, when originally enacted, employer sanctions were perceived as *labor-related* immigration law. Employer sanctions are now viewed more as *immigration-related* labor law and thus should be so treated.⁸

A. Federal Preemption

Prior to 1986, at least thirteen states had employer sanctions laws in place.⁹ In many states, however, these laws were not vigorously enforced.¹⁰ With the passage of IRCA, Congress undertook to have the federal government occupy the field entirely by expressly preempting state and local employer sanctions laws.¹¹ Although the United States Supreme Court had previously sanctioned a state's authority to enact such laws so as to protect workers within the state,¹² once Congress acted in this area of employment law, it expressed its judgment that uniform federal administration and regulations ought to govern matters affecting the employment of unauthorized aliens.

Congress, having spoken so recently on the subject, should now hesitate before lifting the federal preemption bar. As commentators once observed, "our national experience . . . teaches us that as much as a decade or more has been required before new employment standards transform workplace behavior, conditions, and practices."¹³ Less than a decade has passed since IRCA's enactment. Congress and the affected federal agencies should, therefore, be prepared to deal with the issues raised by the new employment law "in a sustained fashion over the long-term."¹⁴

⁸ *Id.* at 24.

⁹ Maurice A. Roberts & Stephen Yale-Loehr, *Employers as Junior Immigration Inspectors: The Impact of the 1986 Immigration Reform and Control Act*, 21 *The International Lawyer* 1013, 1031 (1987).

¹⁰ *Id.* at 1032.

¹¹ INA § 274A(h)(2), 8 U.S. C. § 1324a(h)(2)(1992).

¹² *De Canas v. Bica*, 424 U.S. 351 (1976).

¹³ Bach & Meissner, *supra* note 2 at 31.

¹⁴ *Id.*

B. Private Right of Action

When resorting to the "private attorney general" concept, Congress has opted to rely, in part, on private enforcement to implement public policy and to encourage private litigation by allowing, in this particular case, damage awards. The question then is whether federal immigration policy in the area of unauthorized employment can be significantly furthered in this fashion. Another question is whether encouraging private litigation to implement public policy is a desirable goal under the circumstances presented here. Nothing in the literature to date so indicates. And as stated above, the affected federal agencies should be allowed a longer time to refine the implementation and enforcement processes.

As such, Congress should avoid creating additional federal court remedies if they are not likely to accomplish significantly measurable results in the furtherance of public policy. More important, Congress should proceed with caution when reform efforts exacerbate concerns about adding to the already mounting caseload of the federal courts which some commentators consider to be at crisis proportions.¹⁵

C. Civil Penalties

I do recommend increasing the amount of civil fines imposed against employers who violate the employer sanctions law with impunity. The increased amounts may give some employers who are willing to risk sanctions as a cost of "doing business" some pause. On the other hand, I do not recommend the imposition of civil fines on unauthorized aliens. They already suffer the prospect of deportation. Also, there are other provisions already in the law that could be used to punish those who falsely assert employment authorization and use counterfeit documents in obtaining unauthorized employment.¹⁶ Moreover, undocumented workers risk a lot to come here, given the economic and political pressures in their homelands, and therefore, it is unlikely that the threat of sanctions will be a much of a deterrent.

Finally, section 302 of Title III prohibits the privilege of adjusting one's status here in the United States to those beneficiaries of immediate relative visa approvals heretofore eligible to receive such a benefit. This is a congressional prerogative. However, in light of recent congressional action allowing otherwise

¹⁵ See, e.g., R. POSNER, *THE FEDERAL COURTS: CRISIS AND REFORM* 59, 80, 94 (1985) (urging congressional caution when adding to the caseloads of federal courts).

¹⁶ See, e.g., INA § 274C, 8 U.S.C. § 1324c (1992).

ineligible applicants the adjustment of status privilege,¹⁷ perhaps section 302 may prove to be counter-productive. Given the apparent legislative desire to provide an incentive for aliens to adjust their status in the United States instead of going abroad for immigrant visa processing overseas, such a measure would thwart this objective.

IV. CONCLUSION

Based on the foregoing reasons, I recommend that further consideration be given to simplifying and improving the employer verification system before proceeding with any major statutory reform efforts designed to re-focus employer sanctions enforcement efforts away from the affected federal agencies and into the state and private realms.

¹⁷ See discussion on H.R. 4603 reported in 71 *Interpreter Releases* 1077-1079 (1994).

Mr. MAZZOLI. Let me just get started. Would you, Mr. Fragomen or Mr. Buffenstein, have any experience with the, I guess it is a pilot program that the Immigration Service operates for employment verification using a phone system? Have you had any experience with that as to comment on it?

Mr. FRAGOMEN. Well, where you see it most commonly is when there is actually an enforcement action taken and the Immigration Service goes to the premises of an employer and they actually take copies of all of the Social Security cards and alien registration cards and then they go run it back through their system. It seems to work quite well. I mean, my experience has been that they are 95 percent accurate. The discrepancies aren't too difficult to sort out, and that the level of fraud, in terms of the type of documentation and whatever that is used, is fairly basic.

I don't think it is so much a question of sophisticated fraud. I mean, it does happen where there are false birth certificates and you create a whole imaginary person. But most of it really is just pretty straightforward.

Mr. MAZZOLI. I am curious, is that a system in which the INS agent—and I guess these are part of an enforcement action, so some INS agent is on the premises. Does that individual then use some kind of a machine, or do they just over the phone call in to some person the information from documents that they are reading at the time. Is that—

Mr. FRAGOMEN. They actually take photocopies away with them and then come back several days later. But the irony of it is that the fact that they have been on the premises of the employer and all the workers know that they have been on the premises doesn't result in the worker fleeing or being overly concerned, because they rarely take any action against the worker. All they do is inform the employer that the Social Security or alien registration cards don't check out and the employer should fire any such employees.

Mr. MAZZOLI. Is it your experience, and again, maybe Mr. Buffenstein would know too, is it your experience that people continue to carry with them their Social Security cards or that these are copies made of copies kept by the employer, though the employer doesn't really have to keep copies, but they sometimes choose to do so. But are these copies that the Immigration Service takes out for verification, taken from the individual workers back on the plant floor, so to speak, rather than from a central file maintained by the employer?

Mr. BUFFENSTEIN. We have seen both of those. My personal experience has been more that it is the employer's copies.

Mr. MAZZOLI. The employer's copy.

Mr. BUFFENSTEIN. Yes. And when I referred earlier to the technical violations, those violations offered, even though that copy is present and attached to the I-9, the INS will come in and look at those forms and say, it doesn't have the Social Security number on it.

Mr. MAZZOLI. On the form itself, even though the thing is attached to it.

Mr. BUFFENSTEIN. That is right.

Mr. MAZZOLI. I guess what I was driving at, and I am not sure if I maybe framed my question correctly. I thought that the INS

had a pilot program for some 200 companies or so in the country to then verify, I guess—not necessarily go through the I-9 routine, but to sort of have a separate kind of system which they were looking at to see if it were reliable enough and feasible enough to be expanded, and I just wondered how anyone's experience with that has been.

One of the factors that I found fascinating about the panel headed by Professor Jordan and its recommendation, which is that it comes from a panel that has very different people aboard with very different viewpoints about immigration. And I thought it represented both the ability that Professor Jordan exhibited here and in her earlier life as a Texas State senator and in her current position of being able to pull people together, of actually helping to form a consensus.

It also seemed to me to represent what is mainstream, common, ordinary, off-the-curb rationalizing of this problem. Because we have all—we all have cards, we all make charges, we all see machines that are being scanned and on and on, so it doesn't come as any leap of—although I agree with, I think it was Professor McDermott, I don't understand all this stuff and I don't ever expect I will, but I understand the essence of what it yields, which is the information, and the ability to walk out with a piece of merchandise having made a promise to pay it and that promise is found to be a valid promise. And it seems like, therefore, that what they recommend comes pretty well structured in the sense both of the makeup of the panel and the fact that it represents what average, normal people, not experts in the field, might come up with. You know, how are you going to verify? Well, you know, give them some sort of a document or some sort of phone system or wire system.

So I guess on that basis we—I have found that the immediate and what seemed to be almost an out-of-hand rejection by the White House to be very dismaying to me. I was very disappointed. I can understand why people would have very wide disagreement about these things and the implementation of it. But for the White House to take—for example, the White House appointed Professor Jordan in the first place and to just sort of brush it off that quickly I thought was missing an opportunity to engage in a very serious debate about the thing.

Now, maybe the debate might yield a position which a lot of people hold strongly and ardently, which is that we should never have a card of any kind, whether it is a health care card like the President waived around in February or whether it is a work authorization card or whatever it is, you know. Other people say, yes, we can skirt, as I think you said, Mr. Fragomen, skirt all of the potential shows of civil rights violations and privacy intrusions and still get to the goal which is to have a system in which people who should have a job can apply and get one, and people who have no grounds for applying for a job are rejected.

I guess my question is maybe as much philosophical as anything, is whether or not there is some opportunity that the Commission would still have and that the Congress would still have to move this debate along, even without the White House support. I mean, do you see this becoming an issue? And one of the problems further that I see is that this then becomes an item in various campaigns

being waged across the country, which is not exact by the setting in which we want this thing to be debated. It is inevitable that it would be, but it has not been. So I thought that this would be an opportunity for a very careful debate within boundaries, and it looks like we are not going to have that. So I guess maybe I would like to ask a question generally for each of you to perhaps address that. Where do we go from here?

If we have a situation in which the White House has defied this thing even the chance to get off the ground in which something we know has to be done, because looking at this thing realistically from all of the business angles, there is total confusion, looking at it from civil liberties, there is discrimination, so we know that something ought to be done. And this was something which one group thought could be done and looked at and we are now sort of back at square one.

So maybe starting with you, starting alphabetically, Mr. Buffenstein, maybe you could help us for a few minutes of how you see what ought to be done. In the meantime, one of my suggestions which is at least reducing the total number of documents, and when you have something like this, with 30-plus pages of small print, it is pretty hard for an average employer to really know exactly where to go. So the setting is, what should we do and maybe how should we do it?

Mr. BUFFENSTEIN. Well, I am glad you brought up the suggestion of reducing the number of documents. We as an organization welcome that suggestion. There are 29 different documents, as has been mentioned here today, and it, again, puts the employer in an impossible situation, and some of those documents are not seen frequently.

One can understand why they are necessary, because without anything else, it is the only way to tell whether someone is authorized. Whether a Native American Indian who was born in Canada is authorized to be employed, the only way you can tell that is with a Native American Indian tribal document. But an employer who doesn't see that every day is going to be confused by it.

Therefore, we welcome the sentiment behind the proposal in your bill which would reduce the number of documents. I think we would have an issue with whether those documents should be legislatively reduced or whether there should be some encouragement to the INS to reduce them, because otherwise they might be—there needs to be some flexibility. But the fact of the matter is, the INS is not moving fast enough to reduce those.

One of the encouraging—an encouraging development could be the development of a faster and more easily issued employment authorization document. We are not saying easily, I don't mean without proper qualification, but I mean proper application, issued upon application.

The INS has such tremendous variance from one district office to the other as to how quickly those EAD's are issued. If some of the money that we are talking about could be spent on getting the INS refocused on the adjudication of EAD documents, very, very promptly, we think that would go some way towards helping the issue with respect to the diversity of documents. So that is definitely an important issue.

You covered a broad range in your questions. On the subject of where the committee should go, I would hope this committee would strongly encourage, whether by oversight or legislatively, would encourage the INS to work rapidly on developing a system where EAD's can be issued promptly upon application. That would solve a significant part of the problem.

Mr. MAZZOLI. I think you also mentioned, too, to put the resources more into knowing violations rather than into the paperwork part.

Mr. BUFFENSTEIN. Absolutely. I would hope this committee would very strongly notify the INS, that the nonmaterial paperwork violations, the huge resources and expense incurred by both the Government and the employers in chasing up paperwork trails that don't involve knowing violations should be directed into a far more productive effort.

Now, on the Commission's proposals, I think this committee could play a very valuable role, as it already is in today's hearing, by questioning the implications of that, and most particularly questioning the cost. We have heard estimates all over the ball park. Earlier there was talk about the fact that such a system could cost \$6 billion, and that is not even including the indirect cost to the employer in terms of employers having to buy the machines to read these cards and so on. We are talking about \$6 billion.

Well, we have to look, and all we are urging here is prudence in looking, at what else you could do with the \$6 billion instead, before making a decision, and also looking at how effective, once you have spent that \$6 billion, how effective that data base really would be, given the comments that everyone on this panel and the previous panel has made about the underlying or breeder documents being the real determinant of whether that Social Security document is valuable or not.

Mr. MAZZOLI. Well, I appreciate your saying that. We will go to Mr. Fragomen now. One of the problems that, if we just move forward on the basis of cost, and that is a staggering amount of money, there is no doubt about it, and you could, if that were found to be an accurate appraisal of the cost of this system, that money could go into a lot of different things, including not just immigration work, but medicines to cure cancer. So we always have that big problem.

One of the problems that I see with this, though, is if we don't soon do something with regard to the factors in American life which are causing real frustration in the workplace, real frustration among the electorate, real frustration among people, then I think we may suffer the loss, as I said before, of even an illegal immigration program or having a severe impediment placed in legal immigration.

We have here a belief on the part of people that folks coming into this country illegally are taking jobs, people using faked and hoked-up paper are being qualified to work when in fact they shouldn't, and you know, it is just causing a lot of irritation. So it seems to me that what the White House may not recognize, and is too quickly brushing this thing aside, instead of giving it credence by checking it out—you know, I agree, give it credence, check it out, see how much it costs, can it be done. But to just brush it

off is going to fan the fires of the talk shows and fan the fires of the political people who are going to just get into this thing now and saying your Government doesn't even think about trying to help you.

Here is a panel led by an esteemed person who served her Congress and served her State and now serving her country and they just give at this time the old brushoff. I just think it is really not well thought out, from the long-range standpoint of how to handle the problems of immigrant bashing and of displays of action which don't really take into totality what immigration has done for America and fail to make the distinction between legal and illegal immigration.

Mr. Fragomen.

Mr. FRAGOMEN. Well, my first observation was I found it quite surprising, as I gather you did, that they would take this position. The reason I found it quite surprising was not that we currently don't have a system, we have a system. Now, if it were a question of saying, well, we shouldn't implement some massive verification system where there is no system in place whatsoever and there is no employer verification requirement, that would be understandable. We could debate that.

But the point of the matter is that there is a system in place now that doesn't work at all. All it does essentially is harass employers, and that is about the only thing I can see that it does except provide some money-generating opportunities for the Immigration Service through fines. It also does that. But it certainly doesn't dissuade the employment of undocumented aliens. So therefore, we have to have some viable approach.

It seems to me the only reasonable approach is essentially to use the Social Security data base, because that is the only data base there is, and it seems unimaginable that we are not going to look to that data base and we are going to start all over again and create an entire new data base, and perhaps hire Master Card or American Express to create a new system. That seems preposterous. So therefore, it would seem we have to start with the Social Security data base.

Regarding the Social Security card, the complaints, as I mentioned in my testimony, really seem to run to the issue of identity. It wouldn't be absolutely necessary for there to be one source of documentation for identity and work authorization, at least initially. Certainly, the Social Security card as a work authorization document, if it is verifiable, I believe, would be quite effective.

Now, granted there are a certain number of people who got into the system before they started verifying work authorization, but for about the last 10 years, in order to obtain a Social Security card, everyone had to show some sort of documentation that showed they had a right to work in the United States. So if you were a foreign national, you had to show an employment identification or employment verification document from the Immigration Service in order to obtain a Social Security card.

Now, granted, there are people who got Social Security cards before that system ever went into effect. But I would suggest to you, that is a relatively small population which is ever going to be contracting and shrinking. So I would say that working off of that data

base, basically using the immigration documentation as a vehicle to obtain a Social Security card, making the Social Security card really the focal work authorization data base, implement the system while you go through the process of trying to make the data base more secure it would seem to me that you would come up with a reasonable system.

At the same time, you can't take your attention off of enforcement, or the one issue that really wasn't addressed by the Commission, which is part of the reason there is so many undocumented aliens in the United States. It is commonly acknowledged that there are a certain number of occupations in which undocumented aliens provide services and skills that are needed in the United States. Frequently they are union members and there is no issue of exploitation. Those persons need to be regularized, not through an amnesty, but rather through some sort of a program that gives them the right to work in the United States lawfully. And that is an issue until that is addressed will undermine efforts to address the problem of undocumented migration.

Mr. MAZZOLI. Yes. Well, I mentioned the other day to Professor Jordan and her group that I thought that—because now, they also have a mandate in addition to thinking about illegal immigration, that they are talking about legal immigration. That is also part of their situation. And I think that they have to be willing to take on some bedrock issues, including what your statement was in your—the statement about the reinstitution of a program that would allow people to come into the country legally to work as they did in the old days. The old program was a very discredited program and deserved to be given its walking papers. But maybe there is something like that that would then ease up some of the pressure at the border.

Ms. McDermott.

Ms. McDERMOTT. I don't know. I am politically naive. Can't we go back to the White House and ask them to take a look at it again?

Mr. MAZZOLI. Maybe you are not so politically naive. You sound like you may be from around Boston, and I think maybe you have that instinctive Irish way to know politics and how politics is done. That may be exactly the best way.

I suspect that when the Members start coming back, this is the last week and there is a lot of distractions and on and on, but I think those who follow the subject and all were probably surprised and dismayed, if not dismayed at least surprised, about how quickly this thing, and abruptly and unceremoniously it was whisked away, like some unwanted child.

After all, this panel comes from a very broad group of people from different backgrounds led by the Chair who has studied the subject firsthand and who has given this thing leadership, and to have it just, been just dropped that quickly without any how do you do is I think really—it was unexpected and disappointing.

Mr. Stein.

Mr. STEIN. Yes, I would agree with you, Mr. Chairman, about that.

The issues being raised by this Commission in the hearing are really the crux, the crux of the whole resolution to the problem of

illegal immigration. You can put all the Border Patrol officers you want along the border, but unless there is an effective balanced enforcement profile at these key intervention points, jobs, hiring, applications for benefits, unless you have the capacity to intervene at these various points, we will never get control of illegal immigration. We simply cannot allow this administration to dismiss these recommendations the way they were on Friday.

These Commission recommendations are absolutely the bare minimum needed to get illegal immigration stopped now. They are the byproduct of a broad, bipartisan consensus. Three other Commissions, the General Accounting Office, everybody who is interested in looking at this issue at all, objectively has reached these same conclusions.

The ultimate problem here is that there needs to be a Federal authority established somewhere either in an existing agency or a superintending one above a set of them, because we are dealing here with the interrelationship between Federal plenary authority and immigration matters and other Federal agencies that need to get verification of information or State agencies or private sector officials. And if the Federal Government isn't going to take the leadership in providing States, localities, and other Federal agencies with verification of information as to a person's lawful right to be here or citizenship status or identity, then we can hand wring all we want to about the rising tone of the national debate. But there is very little that the State legislature in California or any other State legislature ultimately could do, given the authority to control the borders, barring a change in our Constitution. So we can't let these die.

Mr. MAZZOLI. Thank you. Professor.

Ms. VAUGHNS. Yes. Mr. Chairman, I guess we are really faced with two realities right now. First, the employer sanctions regime as presently implemented really isn't working, and second, jobs exist out there that undocumented aliens seek and are hired to do.

And I suppose with respect to the employer sanction reform measures, we have identified the crux of the problem, what needs to be done to try to strengthen the employment verification system, and as Mr. Fragomen indicated, perhaps we need to take another look at regularizing the status of aliens who are employed in those jobs currently, because it is a reality that these job vacancies exist, and American workers are not seeking them.

Mr. MAZZOLI. Thank you. Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman.

Let me focus a few of my minutes of questioning on the whole issue of employer sanctions and how employers must somehow meet the requirements, and I know it has been tough, especially when there is an agency such as INS that has been underfunded and understaffed to make it possible to somehow coordinate activities with employers.

Mr. Fragomen, you mentioned that the system for a number of reasons has not worked adequately, and in your written testimony, it is very thoughtful and I think it is very insightful, and it mentions that we have to finally decide, if we are not going to make it work, let's admit that or let's really do what we have to do to

aggressively enforce employer sanctions to make it work. Anything in between, we should just admit that it is not going to happen.

And you mentioned that by going towards an ID card, a national worker ID card, we can finally be clear on the implementation of employer sanctions, and also I think you mentioned reducing discrimination, because if everyone has a card you avoid that problem that employers have of trying to identify people.

Short of those two extremes that you pointed out in your testimony, do you see any other way of getting a clear answer about whether employer sanctions can or cannot work?

Mr. FRAGOMEN. Well, my experience would indicate to me that there has been a proliferation of fraudulent documents, which I think is really underestimated by most of the policymakers, you can't imagine how easy it is to get a false alien registration card in New York City. And what typically happens is, the employers that have a need for a large number of workers on the lower end of the economic spectrum let's assume they are unionized workers, tend to hire persons who basically are undocumented aliens who all have false documents. So the point of the matter is that unless you can verify those documents, you have an absurd result.

I had a recent example where an employer had 300 or 400 workers in a particular category who were union members. The Immigration Service came to the employer's premises, took photocopies from the employer's records of alien registration cards. The INS ran all the cards through the system and they came back and told the employer that every one of them is a bad card, and he should terminate all of the employees. The employer said to the Immigration investigator, well, if I terminate all of the employees, he said, that is going to create a big problem for me, because we have contractual obligations and we are rendering a service.

And he continued, "If I do terminate all of the employees and we hire new ones everyone I hire is going to have a false alien registration card, and can you verify the numbers before I hire them?" To which the Immigration Service officer answered, "No, we can't do that." And the employer said, "Well, what am I supposed to do?" And the immigration investigator said, "Well, that is your problem." That is the type of situation which you actually deal with on a day-to-day basis. And I would say that unless there is going to be a meaningful system through some sort of a national registration verifiable system that employer sanctions enforcement will not work. I don't care how many investigators the Immigration Service hires, it won't work.

Mr. BECERRA. Now, let me key on that one point that you just mentioned, the national registry system becomes a necessity.

In your testimony, you talked more specifically about a need to be able to identify the employee through the card. I think some of the concerns that are out there on the registry is that, if you were here earlier for the testimony from the folks from the Government agencies, it became clear that if you come in as a prospective employee and all you have to do is provide information never having to verify it to the employer that doesn't verify for the employer if in fact he or she is ultimately hiring someone who is eligible to work.

So ultimately you need some way to give the employer confidence that he or she is making the right decision and won't be penalized for innocently making the wrong decision. That leads you to the card.

You talk about the need to make sure it is verifiable, counterfeit-proof to the degree possible. I think a lot of us in Congress have to decide whether or not, if employer sanctions are going to work, we are going to make them work, we can find a system to make them do so. Is it your opinion that to make employer sanctions work, we have to cut to the chase of the issue and come up with a system that gives a way of verifying each and every individual's employability and that would be a national employment ID card?

Mr. FRAGOMEN. I think that type of ID card, whether a Social Security card with index fingerprints or iris images would be the optimal situation. But I wonder, in listening to the discussion this morning and the testimony of the representative of the Social Security Administration, if we use the Social Security Administration's data base for employment authorization—that is; the exclusive document using the basic structure of the current system would be a Social Security card, but identity could actually be shown through a variety of other documents, whether it is a passport or an alien registration card or whatever, but every document would be verifiable, that although such a system wouldn't be as effective as an ID card, that it would serve as an interim measure while the process was implemented to screening everyone and coming out with an actual identification document.

Mr. BECERRA. In an employer sanction system short of without a national ID card, that we have a world without a national ID card with employer sanctions still in place, is there a way to eliminate discrimination?

Mr. FRAGOMEN. I think that if the Social Security card using the Social Security Administration's databank were used for employment authorization, as the employment authorization document, that it would help tremendously in limiting discrimination. So I think it can be done, at least in making the situation a lot better than it is now.

Mr. BECERRA. Ms. McDermott, any thoughts on this discussion here?

Ms. MCDERMOTT. I would love to see a Social Security card being used as an employment eligibility document. I would like to be able to punch that number into a telephone or to swipe a card and then look at a driver's license or a passport or an alien ID, a State-issued ID, some document that proves identity and that would be it.

The way it is now, I go crazy every Monday trying to answer phone calls throughout the United States on documentation that U.S. citizens are bringing in. People do strange things to the Social Security card. They laminate them, they are punched in metal. None of those things are acceptable. When you say to someone, we can't take that document, they get angry. My response is, it is not me; it is the Government.

We end up sending them at lunch time to a local Social Security office to get another card. They come back with a receipt and, by the way, the receipt says not to be used for employment eligibility,

but we have to take it. I would like consistency, if nothing else, between INS and the Office of Special Counsel.

I found out this week that a laminated Social Security card can be used as long as it doesn't say on the back of it this card cannot be laminated. I have 45 people in the United States that I have to go back and tell them, turn the card over.

Mr. BECERRA. Professor Vaughns, with regard to the issue of the ID card and discrimination, any thoughts on what we can do about the issue of discrimination? I understand the GAO's report in 1990 found that about 20 percent of employers discriminated in some fashion. Most, I think, people will readily admit was not intentional discrimination attempting to exclude people specifically because of their national origin but more because it became very difficult for them to make a decision as to whether this person could be employed, and ultimately they didn't want to face the burden of making the wrong decision.

Your thoughts on the whole issue of discrimination and what can be done to try to eliminate it under a system of employer sanctions?

Ms. VAUGHNS. That is an interesting question that you are posing. Discrimination, in and of itself, existed prior to the implementation of employer sanctions and, to a certain degree, perhaps the initial reaction by employers who were insisting upon better verification was to, in a matter of speaking, legally discriminate.

Mr. BECERRA. When you say discrimination already existed, that would be more the invidious type or heinous type of discrimination where someone intentionally means to do harm to an individual.

Ms. VAUGHNS. Yes.

Mr. BECERRA. Let's disregard that for now for purpose of this discussion. Let's talk only about the discrimination that results from having an employer sanction system?

Ms. VAUGHNS. Sometimes it is very difficult to separate the two. Be that as it may, I think in large measure the original reaction was the confusion that was generated by which documents are to be used to verify employment authorization and confusion because there was a lack of education of employers by the agencies that administer this program.

So it seems to me to the extent that confusion can be cleared up—opportunities for discrimination would diminish. I was absolutely shocked to hear the example given this morning between INS saying one thing and the Office of Special Counsel saying the other thing. You can't expect the employer who is not an immigration practitioner to appreciate the niceties or the difference between the two statuses or the expiration of one status, or whether to consider that as verifiable or not.

It makes no sense to put that kind of burden on the employer. This system should be a system that an employer could easily comply with in order to guard against the tendency, if you will, to err on the side of caution and not accept certain documents.

Mr. BECERRA. What can an employer do? And that is a reason I have concerns about an employer sanction, what can we do as policymakers who implement or pass the laws to implement employer sanctions? What can we do to make sure that employers

don't carry the heavy burden of implementing employer sanctions—

Ms. VAUGHNS. I think that system is already in place if we didn't have the problem of counterfeit documentation and the proliferation of employment verification documents that currently are out there. It has been left to the agency to decide or dictate what employment documents are acceptable.

As Chairman Mazzoli's bill has suggested, there should be simplification, I believe, in terms of the number of documents that are in existence. As I indicated in my written testimony, some leeway should be given to the agency in that enterprise because the example used, I believe, in Commissioner Meissner's testimony was the Native American Indian.

Mr. BECERRA. What of the idea of going to one identifier for purposes of being able to verify employment? Where do you stand on that?

Ms. VAUGHNS. I do understand the civil libertarian concerns about a national ID card. I was smiling every time I saw President Clinton hold up that national health care card. I said, *voilà*, that is a national ID card, and nobody seems to be saying anything about where that leads us to except when it is discussed in the context of immigration.

Of course the proposal ended up dying. I don't know what discussions took place in your committee meetings about the use of that particular national ID card and the fact that it could easily be labeled that infamous national ID card which has gotten so much discussion here.

Mr. BECERRA. In terms of the employment context, would you be in favor of going to a national identifier like a national ID card? Sorry to ask.

Ms. VAUGHNS. As a practical matter, I don't have a problem with it. We have so many cards out there right now that we use, that anything can get lost and I think anything can be counterfeited these days. So perhaps not so much as a card but some central system like a telephone system where an individual, based upon certain information, however that information is gotten, can be punched into a computer, linked to a national data base.

We are in the modern era, we are facing the 21st century. We should be able to do something that doesn't cost billions of dollars to implement.

Mr. BECERRA. This registry as you have described where we provide information to our prospective employer and the employer punches that information in, ultimately the employer has to have some means of connecting the information that is provided to the individual, which requires the employer to request some form of verification.

Ms. VAUGHNS. That is true. But there could be maybe two or three forms that are acceptable instead of the single form. Also, while listening to your exchange with the individual from Social Security I was curious to learn about what confidential information will eventually become known.

I was thinking, when I am at the checkout counters in grocery stores, there's a system in place where you give a credit card, for example, in order to pay for your groceries. But then you are hand-

ed something to code in your own number and, presumably, the checker doesn't know it, and unless you tell someone else that number, no one else knows it, then, finally, the system verifies that this is a good number, and it allows you to pay for your groceries.

Mr. BECERRA. But if you do that, can't any prospective employee go to an employer, punch in a number the employer doesn't know, as long as the employer knows that is a valid number, that will ring green, yes, and the employer has no way to verify if in fact this person has punched in information which belongs to that individual.

Ms. VAUGHNS. You are right. We are still back to square one in terms of something to identify the person with the information and the secret code.

Mr. BUFFENSTEIN. I wanted to comment on one or two of the issues you raised in your questions. Firstly, the mere fact of having an identifying document or a Social Security card or a picture ID is not necessarily going to solve the discrimination problem. From the discrimination perspective, if there is a doubt, you walk into a store and the credit card doesn't bear out and there is a problem because the number comes up and it says you are not authorized, and within a day or so, you sort it out with the bank and everything is straightened out.

Here you are talking about a difference between going into a store to buy a product and applying for a job that is important to your livelihood. I think that has to be put on the table.

I come at this from the perspective of a business lawyer representing companies who would like very much to get the OSC off their backs, but I think it has to be acknowledged that discrimination is not necessarily going to go away simply because you have a document.

Mr. BECERRA. Let me add something to what you have just said. Back in 1991, one of the committees in this House, the Ways and Means Committee conducted a hearing where it discussed the use of a Social Security card and the information there in many of the same ways that you are discussing, and they asked a couple of companies, TRW and Citicorp to provide information on their use of identifying information and finding out the accuracy of the information provided.

The results of that study showed that there were error rates of 46 percent and 28 percent respectively between TRW and Citicorp when it came to data being incorrect. We have seen that documentation provided, even to private corporations for the purpose of verifying, also has a great deal of uncertainty attached to it.

Mr. BUFFENSTEIN. As you said, to the extent that discrimination exists and has existed over the past 8 years, the vast majority of discrimination is absolutely unintentional and simply a forced discrimination. But at the margin when an employer is faced with a number that doesn't work, who is going to get the benefit of the doubt, Daryl Buffenstein, who has a foreign sounding accent, or Austin Fragomen, who sounds like an American. I am not saying necessarily that that kills the idea, but that that needs to be looked at and shouldn't be regarded as a cure-all to anything.

The other issue, you asked what the committee should do and where the burden is on employers. I am absolutely convinced and

I think Mr. Fragomen and Ms. McDermott will share this thought with me, that 90 percent of the burden on employers is the paperwork violation issue.

What I think this committee and this Congress could do is get the INS off the employer's back with respect to those paperwork violations. Some of those violations, like not writing the number on the form. I know there is a credulity gap because you say this cannot be possible, but the INS fines employers repeatedly running into hundreds of thousands of dollars for not putting the number on the form when the number is very clear in the attached document, that kind of violation. So this committee can redirect INS enforcement objectivity.

Let's look at the proportion—I don't know what the number is—at the proportion of resources that is devoted to technical violations. The INS Commissioner had testified before this committee last week that there were some 36,000 leads of knowing employment violations that the INS just never followed up on. Why aren't they following up on those? Why are they going for the technical paperwork violations? Those are the questions the committee ought to be asking.

I think you will agree that the problem with this debate is that it is very susceptible to the theological approach where someone says this is the way to solve the immigration problem and everyone who doesn't agree with that particular way just isn't serious about solving the immigration problem.

Unfortunately, life isn't that simple. There aren't those quick fixes. It is extremely appealing to dive head long into a Social Security verification system because it looks like such a great way to get the INS off the employer's back and have something that is fair for everybody. Let's take a very careful look at it.

Mr. BECERRA. I have tons of questions, but no more time. I wish to thank all of you for having come and provided us with insightful information. I hope we can do something with it and improve the system.

Mr. MAZZOLI. Thank you. Going back to what I think Mr. Stein said about the left hand not knowing what the right hand does in government and the confusion that exists there and the collision sometimes, one of the things that we have done here, I think I am correct, is the gentleman from Florida, Mr. McCollum, and the gentleman from New York, Mr. Schumer, and I sent a letter to the President asking that under the 1986 act, the President is given authority to seek a more secure verifiable system, and no President has ever acted under that law of 1986.

We have urged the President to do something, because it is he who can really end all of these turf battles and fiefdoms and confusions and so forth. It is he who can lay the marker down of just what government is going to do. We haven't heard back as to whether anything will mature from that, but it is something that a President should do and I think that would solve a lot of the problems.

One of the reasons I am more disappointed than I should be, because this is the recommendation of Barbara Jordan's panel, not ours, but that seems to show the President or the administration is not going to get into this thing, the administration is not going

to try to knock barriers down and smooth paths that would get something done and allow people to apply for jobs without being discriminated against, but would deny jobs to those who have no entitlement to them.

I think it is that situation which I find very difficult. Beyond the merit or demerit of these proposals because they have been before us and there are certainly sharp edges, but just to not have the debate at that level is, I believe, to say that the debate will be down at the State level, in the polls this November, that is where the debate will be, not in the White House, not in Capitol Hill, but down there. I don't think that is where it ought to be. .

It seems to me, if there is anyplace where we should debate this issue, it is not in that campaign with 4 weeks left to go and with people wanting to get the edge on the opponent, but we want to debate it in this kind of setting with a distinguished panel with various backgrounds and divergent views, led by a Chair that has universal esteem; that is the time to seize on this issue and do something with it. They might take Ms. McDermott's very succinct and sage advice and see if they can't reexamine what they just did.

May I thank my friend from California because I know how Monday mornings can be, and at the last hour, I didn't know about this confusion until 9 o'clock this morning and my friend was there to bail me out and I very much appreciate. I extend my thanks to the gentleman from Texas, Mr. Bryant, who is not here, but he also helped.

Let me thank the panel and we have questions that weren't asked which we may send you. Feel free to send us anything from time to time that you have that you think would bear upon our work, not just with regard to employer sanctions, but with the broader questions of immigration, it would be very helpful.

Having said that, the subcommittee stands adjourned.

[Whereupon, at 1:20 p.m., the subcommittee adjourned.]



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